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**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF WATER)
TO WATER RIGHTS NOS. 36-02356A, 36-07210,)
AND 36-07427)
(Blue Lakes Delivery Call))
_____)

**AFFIDAVIT OF
RONALD DEAN CARLSON**

IN THE MATTER OF DISTRIBUTION OF WATER)
TO WATER RIGHTS NOS. 36-04013A, 36-04013B,)
AND 36-07148 (SNAKE RIVER FARM); AND TO)
WATER RIGHTS NOS. 36-07083 AND 36-07568)
(CRYSTAL SPRINGS FARMS))
(Clear Springs Delivery Call))
_____)

STATE OF IDAHO)
ss:)
County of Bingham)

1. I was raised on an irrigated farm in Firth, Idaho. This farm, which I still own and manage is in the Snake River Valley Irrigation District. I graduated from Firth High School and attended the

University of Idaho where I graduated with a Bachelor of Science and a Master of Science in Agricultural Engineering.

2. My engineering specialty area was hydrology and irrigation. In September of 1972, I was hired as a hydrologist by the Idaho Department of Water Administration (Department). The Idaho Department of Water Administration was later renamed the Idaho Department of Water Resources.

3. In 1973, I moved to Idaho Falls to manage the dam safety program for the Department's Eastern Region office.

4. In 1974, I became the District Engineer, which was later renamed "Regional Manager," a position which I held until I retired in 2006. During my first year as Regional Manager, I earned my professional engineer's license and have since been a licensed and practicing engineer in good standing under the laws of the state of Idaho.

5. In 1978, I was elected Watermaster for Water District 1 and continued in that position until my retirement in 2006. Water District 1 is the largest water district in the state. Water rights administered by the Watermaster of Water District 1 authorize the distribution of over 8 million acre-feet of water annually to nearly 1.2 million acres of land located along Snake River and its tributaries from where it enters Idaho below Alpine Wyoming to Bliss Idaho. The last diversion for lands entitled to receive water within Water District 1 is at Milner Dam which is located just downstream from Burley, Idaho. As Watermaster, I was responsible for all water diverted from the Snake River and its tributaries within Water District 1. These water rights on the Snake River were established pursuant to court decrees commonly know as the Rexburg and Foster Decrees.

6. During my tenure as Regional Manager and Watermaster, I became familiar with all of the historical and contemporaneous water delivery practices of Water District 1 and the policies and

procedures of the Idaho Department of Water Resources (IDWR or Department), including but not limited to administration of water rights, delivery of water rights, the licensing, permitting, and transfer of water rights, the recommendations of water rights in the Snake River Basin Adjudication and nearly all operations within the Department. I was frequently asked to speak to various groups as an expert in Idaho water law and administration and have been called upon to testify as an expert witness in several court cases over the years.

7. Throughout my career, I served as the Department's hearing officer for many water right disputes. I also served as a mediator in water disputes that were related to issues that would have otherwise been litigated. Based on the forgoing and my education, training and experience I am recognized in Idaho as an expert on the historic application of Idaho water law in the distribution and administration within Water District 1 and on the Department of Water Resources' policies and practices existing during my employment.

8. As part of my job duties, I became familiar with the history of water use and development in Idaho and on the Eastern Snake River Plain in particular. Irrigation of the Eastern Snake Plain was well underway by 1880. The number of acres irrigated increased to the point that by the end of the 1950s, the irrigated acres were approximately 1.83 million.

9. Many of the flood irrigated projects on the Eastern Snake River Plain faced frequent water shortages simply because water supplies are highly variable and flood irrigation is relatively inefficient. Crop water requirements in southeastern Idaho range between 1 and 4 acre-feet per acre. Many of the irrigation companies delivered between 10 and 20 acre-feet per acre. This "inefficiency" represented millions of acre-feet of "wasted" water that caused water levels in many parts of the Eastern Snake Plain Aquifer ("ESPA" or "Aquifer") to rise 60 to 70 feet. This waste water actually represented a

diversion to storage in the ESPA where it was stored and retained for later use in Idaho. The construction of ditches and canals provided more than just irrigation water for developments on the Eastern Snake River Plain. Canals were kept full year-round to provide water to settlers for domestic and stock watering purposes. This practice of flowing water in the canals in the non-irrigation season also contributed to the increase in the amount of water stored in the Aquifer.

10. With the advent of turbine pumps, lands being irrigated by surface water were being converted to more dependable ground water sources. The amount of land being irrigated with ground water rapidly expanded across the Eastern Snake River Plain. It is estimated that by the time the Department opened its regional offices in 1971, over 750,000 acres of land on the Eastern Snake River Plain was being irrigated with ground water.

11. As Regional Manager, I had the responsibility of overseeing the permitting and licensing of water rights in the eastern region. Many surface water rights were only in priority very early in the year for short periods of time and attempting to do licensing examinations when water was actually being diverted under these water right permits made licensing a very difficult process to complete. Assumptions had to be made to complete the required examiner's report and issue the license. While surface water uses were generally easiest to measure, high water rights could actually go for decades if licensing assumptions were not made. In most cases, the examiner would simply measure the capacity of the diversion works to determine that the applicant was capable of diverting the amount of water that had been applied for. The downside of this process was in the inherent assumption that someday there might be sufficient water to supply the amount of water that was applied for and ultimately licensed. Consequently, since the permitting process became mandatory in 1971, most licensed water rights for surface sources are based upon system capacity, not water availability at the time of licensing.

12. Because ground water was considered to be a separate source of water, ground water uses could generally be measured and as a general rule were the only water rights that were limited by the licensing examination. While ground water always has been administered by volume (acre-feet), because ground water is pumped and directly used the water right shows a limiting rate of diversion in cfs. Over the years, many surface water users asked to transfer their surface water rights to ground water. The Department never developed a procedure to do this because ground water and surface water were independent sources.

13. Ground water users frequently applied for less than the maximum of one inch per acre (0.02 cfs).¹ When the water right licensing examination was done, the field agent would normally measure the amount of water being pumped when the system was being operated under full capacity. If the amount measured was more than the amount applied for, the applicant was either allowed to file a new application for the difference, or the license would be issued with a statement saying the owner of the right was not allowed to pump over the amount requested on the application.

14. At the time I became Regional Manager in 1974, there were three fundamental principles of water law that influenced the Department's decision on every application to appropriate water: (1) ground water was a separate and independent source of water; (2) all hydro power rights, on Snake River were fully subordinated or mitigated (all of the rights of Idaho Power were specifically subordinated as part of the agreements that permitted them to construct the three hydroelectric dams in Hells Canyon); and (3) all of the water arising above Milner Dam that was not diverted and used upstream was available for appropriation by upstream water users. Water that flowed past Milner Dam

¹ The legislature established one cubic foot per section per 50 acres as the maximum use of new applications of irrigation water. The statutory maximum diversion rate of irrigation is one miner's inch per acre which, in Idaho, equals 9 gallons per minute per acre or 0.02 cfs. See I.C. § 42-223.

was by definition, unappropriated water. These three principles were applied in the evaluation of every application for permit the Department received.

15. Because most surface water rights were licensed by measuring the capacity of the diversion works, non-consumptive uses quickly became problematic. A large non-consumptive water right such as for hydropower or fish production facility could end up with a water right that was for more water than the source ever produced.

16. Ground water that surfaced as springs created a unique administrative situation. Springs generally were identified on the application as "springs" tributary to something. Frequently a spring was tributary to "sinks." The application reflected the possibility that the spring might have an impact on downstream water users. However, the Department never considered the possible impact on "upstream" users which could include ground water.

17. The springs that emerge from the north side canyon wall near Hagerman were considered to be ground water by the Department. Ground water was considered a separate source and not subject to the Department's normal regulation of surface water. This understanding was confirmed by former Department Director Kenneth Dunn during his discussion of the Swan Falls Agreement before the Expanded Natural Resources Interim Legislative Committee on July 7, 2004. Exhibit R attached hereto is a true and correct copy of the minutes from that committee meeting, see page 8 for Mr. Dunn's remarks. For that reason, it is not surprising that new applications for the springs were not protested by other ground water users. The operative management principle for ground water was that the water user must establish reasonable means of diversion and reasonable pumping levels and be prepared to chase the water supply to a reasonable pumping level. This principle was understood to apply to spring users

who would also be required to lower and improve their diversions as reasonably necessary to secure their supplies.

18. Furthermore, the non-consumptive use of the water flowing from the springs for fish propagation was not dissimilar to other secondary uses of otherwise appropriated water. The springs at Thousand Springs are an example of this. The Department would have not found applications to use water flowing from the north side springs (springs located in the Thousand Springs area) to be “in the public interest” unless they were clearly subordinated to upstream development. Any applicant with the ability to use all of the water all of the time such as a fish production facility or hydro power plant became a threat to everyone else who might wish to use water for some consumptive purpose in the future. If this condition was allowed to exist, all streams and water supplies would be controlled by spring users or hydro power plant owners. They would very quickly be the ultimate administrator of the state’s water resources.

19. Many of the licenses issued for spring uses were based upon the capacity of the diverting works rather than the amount of water that was actually diverted at the time the licensing examination was conducted. Thus, the licensed quantities were not reflective of the actual quantity of water available for diversion and use. But, because these uses were non-consumptive and “started” at the canyon wall, it is clear the Department was very liberal in licensing large quantities in the water rights.

20. In the late 1970s and early 1980s, the validity and scope of Idaho Power Company’s water rights on the Snake River became an issue when ratepayers complained to the Public Utilities Commission that company was failing to protect its water rights. Eventually, Idaho Power Company filed a lawsuit naming thousands of junior water right owners who diverted water from the Snake River

Basin. As a result, the state of Idaho began negotiations with Idaho Power Company to settle the lawsuit.

21. In 1984, Idaho Power Company, along with the State of Idaho through the Attorney General's Office and the Governor, entered into what is commonly referred to as the Swan Falls Agreement. A true and correct copy is attached hereto as Exhibit S.

22. The Idaho Water Resource Board adopted the 1977, 1982 and 1986 State Water Plans. True and correct copies of portions of the State Water Plans are attached hereto as Exhibits T-V. As those policies indicate, it was the common understanding at the time of the Swan Falls Agreement, that spring users were not authorized under their water rights to make delivery calls against ground water users. Without that understanding, the entire basis of the Swan Falls Agreement would be undermined. It would have made no common sense to treat the spring users as having a right to call on the aquifer and thereby undo all of the major elements of the Swan Falls Agreement.

23. At the time the Swan Falls Agreement was being negotiated, I understood as the Eastern Region Manager and the Watermaster for Water District 1 that the use of water by the spring users, in the Hagerman area was a non-issue in the negotiations because the spring uses were considered ground water and they used water that was in transit to what water Idaho Power uses.

24. This underlying premise was made very clear in the public hearings before the Idaho Water Resources Board. Exhibit W attached hereto are portions of those hearings that demonstrate that the spring uses were met by the minimum flows below Milner Dam and that they were not water rights that could call out junior-priority ground water uses.


25. Based on the forgoing, it is my opinion that the delivery calls made by the spring users in the Hagerman area, should have no legal standing under long established applications of state law

notwithstanding the fact that their water rights were subordinated by the Swan Falls Agreement. Since the spring users were simply permitted to use appropriated water, when Idaho Power's water rights were established at "3900 cfs average daily flow from April 1 to October 31, and 5600 cfs average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls." The collective rights of the spring users were similarly subordinated. (See Swan Falls Agreement at 3, & 7.A., Exhibit S.)

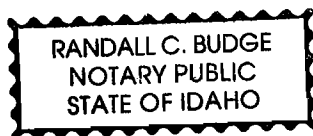
26. It is further my opinion that to the extent the spring users water rights were not subordinated by the Swan Falls Agreement they are ground water rights and must first establish reasonable means of diversion and reasonable pumping levels to secure their water supplies before any call can be made against other ground water users.

Further your affiant saith not.

DATED this 13th day of June, 2007.


Ronald D. Carlson, P.E.

SUBSCRIBED AND SWORN to before me this 13th day of June, 2007.



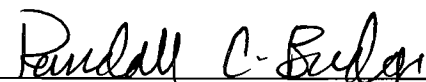

Notary Public for Idaho
Residing at: Pocatello, ID.
My Commission Expires: 10/11/2012

Exhibit R

Natural Resources Interim Committee Meeting 7-7-2004

Subject to approval of the Expanded Natural Resources Interim Committee

**EXPANDED NATURAL RESOURCES INTERIM COMMITTEE
MEETING - July 7, 2004
MINUTES**

**9:30 a.m. Boise City Hall, City Council Chambers,
3rd Floor, 150 N. Capitol Blvd., Boise, Idaho**

The meeting was called to order by Cochairman Representative Dell Raybould at 9:40 a.m. Other committee members present were Cochairman Senator Laird Noh, President Pro Tem Senator Robert Geddes, Senator Dean Cameron, Senator Don Burtenshaw, Senator Joe Stegner, Senator Skip Brandt, Senator Clint Stennett, Representative Bert Stevenson, Representative Mike Moyle, Representative Scott Bedke, Representative JoAn Wood, Representative Jack Barraclough, Representative George Eskridge, Representative Charles Cuddy and Representative Wendy Jaquet. Senator Stanley Williams and Senator Bert Marley were absent and excused. Adhoc members present were Senator John Andreason; Senator Brad Little; Senator Gary Schroeder; Senator Tom Gannon, Representative Darrell Bolz; Representative Maxine Bell, Representative Wayne Meyer; Representative Lawrence Denney and Representative Pete Nielsen. Senator Shawn Keough, Senator Brent Hill, Senator Marti Calabretta, Senator Dick Compton, Representative Tim Ridinger, Representative Eulalie Langford, Representative Larry Bradford, Representative Doug Jones and Representative George Saylor were absent and excused. Non-committee legislators in attendance included Speaker Bruce Newcomb, Representative Frances Field, Representative Sharon Block and Representative Anne Pasley-Stuart.

Others present included Ray Houston, Legislative Services-Budget and Policy Analyst; Linda Lemmon, Thousand Springs Water Users Assoc.; Roger D. Ling, Water Users; Garr Wayment, Southwest Irrigation District; Larry Pennington, North Side Canal Co.; Brenda Tominaga, Michael Creamer, Tim Deeg and Lynn Tominaga, Idaho Ground Water Appropriators; Randy MacMillan, C.E. Brockway, Jim Tucker, Jim Lockhead, Rich Hahn, Idaho Power Company; Jack Bell; Tim Corder, Mountain Home Advisory Committee; Barry Burnell, Idaho Department of Environmental Quality; Bill Thompson, Minidoka Irrigation District; Director Karl Dreher, Gary Spackman, L. Glen Saxton, Dave Tuthill, David Blew, Brian Patton, Phil Rassier and Hal Anderson, Idaho Department of Water Resources; Rex Mirchey and Ted Whiteman, Jerome Cheese; Dale Rockwood, Paul Berggren, Committee of 9; Allyn Meuleman, USBR; J. Dee May, Rangen, Inc.; Ron Carlson, Idaho Department of Water Resources/Water District 1; Roger Schmitt, Rich Rigby, Darla Walton and Gail McGarry, Bureau of Reclamation; Tom Stuart and Bill Sedivy, Idaho Rivers United; Mike Faulkner and Lynn Carlquist, North Snake Ground Water District; Brent Olmstead, Roger Ray Parsons, USD; David Suchan and Dean Stevenson, Magic Valley Ground Water District; Christian Petrich, SPF Water Engineering; Joe Jordan, Idaho Water Resource Board; John Roshalt; Chuck Coiner, Twin Falls Canal Company; Dick

Rush, IACI; Gayle Batt and Norm Semanko, Idaho Water Users Assoc.; J. Matt Uranga, J-U-B Engineers; Neil Colwell, Avista Corp.; Leonard Beck, State Water Board; Mary Lupachick, Idaho Department of Parks and Recreation; Craig Evans and Todd Van Orden, BGWD; Del Kohtz, Idaho Water Co.; Bruce Wright, Basic American Foods, Dana Hofstetter, Hofstetter Law Office; Pat Sullivan, Sullivan and Reberger; Mark Daily and Bill Jones, TSWUA; Joann Hunt, NWPPC; Lewis Rounds, Idaho Department of Water Resources/Water District 120 and Lomar Bates, City of Twin Falls. Staff members present were Katharine Gerrity, Susan Bennion, Mike Nugent and Toni Hobbs.

After opening remarks by the Cochairmen, a panel consisting of Mr. Ken Dunn (former director of the Idaho Department of Water Resources), Governor John Evans (Governor of the State of Idaho 1-24-77 to 1-5-87), Mr. James Bruce (former CEO, Idaho Power Co.), Mr. Jim Jones (former Attorney General), Mr. Roger Ling (attorney for water users), Mr. Ray Rigby (former state senator and former chairman of Governor Evans' advisory committee), Mr. Pat Kole (former deputy attorney general for Jim Jones), Mr. Kent Foster (attorney for water users) and Mr. Pat Costello (former counsel for Governor Evans) was introduced. These panel members were all instrumental in the development and implementation of the Swan Falls Agreement that was reached in the 1980s.

Mr. Ken Dunn stated that without the Swan Falls Agreement the state would have gone for many years with no development in the Snake River Basin or faced severely reduced flows at the Murphy gauge as a result of the litigation between the Idaho Power Company and the State of Idaho. The alternative to the Swan Falls Agreement was to have FERC subordinate Swan Falls. This would not have been good for the state at that time and, in his opinion, it would not be good for the state today. The Swan Falls Agreement was the result of a lot of work by many people. It did provide a settlement and provided some water for development. It provided water, not only for irrigation, but for industrial, municipal and domestic development in the southern part of the state. From an economic standpoint, this was absolutely critical. The agreement protected some water levels at Swan Falls which then protected water levels in the Lower Snake River for the dams.

Governor John Evans said that on October 25, 1984, he signed the Swan Falls Agreement along with Attorney General Jim Jones and Mr. Jim Bruce, Idaho Power Company. He commented that the leadership and willingness of Attorney General Jim Jones and Mr. Jim Bruce to negotiate allowed this final agreement to be reached. A special advisory committee was formed for the Swan Falls Agreement that included water law specialists that came up with substantial recommendations and advice. The key negotiating team of Pat Costello, Pat Kole and Tom Nelson representing the Governor's Office, Attorney General and Idaho Power Company respectively, were instrumental in putting the agreement together. Not only did they negotiate almost full time during the summer and fall of 1984, they then had to convince the Legislature the agreement was the only option available. **Governor Evans** stated that it was vital that the Legislature adopt the entire agreement. He thanked these men for the work during that time.

Governor Evans continued that over Idaho's water development history, there have been serious water wars between the Upper Snake River Basin water development program and the nonconsumptive water rights holders, principally Idaho Power. As the power company built power generating facilities or dams on the Snake River, the state and the power company had to assume that the generating facility's water rights were subordinated to upstream consumptive use, mainly for irrigation. In a 1982 lawsuit filed by Idaho Power, as a result of ratepayer complaints that the company had not protected its water rights at Swan Falls from upstream development, everyone, including Idaho Power, assumed that as a result of the Hells Canyon Dam subordination agreement, it also subordinated the water rights at Swan Falls. The Supreme Court held that the subordination did not apply to Swan Falls. Due to this decision, in 1983 and 1984, the Legislature went through some bitter water battles trying to override the Court's decision, but to no avail.

In the spring and summer of 1984, the Governor and Attorney General contacted Idaho Power to see if a negotiated settlement of these serious water rights issues could be reached. Mr. Jim Bruce of Idaho Power Company was most willing to do this because the water battles had been very costly to the company and they did not want to interfere with the development of water resources upstream from Swan Falls. The parties appointed their attorneys, Pat Kole, Pat Costello and Tom Nelson to initiate the negotiations. Ken Dunn, then Director of Idaho Department of Water Resources, and former Senator Ray Rigby added their input and leadership and after many proposals by both sides, an agreement was reached to negotiate a complete settlement of the entire Snake River water rights controversy. A general adjudication of the Snake River water rights was agreed to along with the collection of the necessary hydraulic data to predict the effects of future water development. In addition, the state agreed to develop a comprehensive water resource development policy and negotiated to compromise minimum stream flow at Swan Falls. This minimum stream flow was to be 3,900 cfs during the irrigation season and 5,600 cfs in the winter.

Governor Evans noted that one major issue that still remained was how to pay for the adjudication of all of the water rights in the state. The cost at that time was estimated to be \$28 million. In response to a question about how much has been spent to date, **Director Karl Dreher** responded that it has been close to \$70 million in general funds, not including private money.

Governor Evans said that he believes there are several issues associated with Swan Falls that may influence the water rights issues being faced today. He believes that Idaho Power will protect its minimum flows set by the Swan Falls Agreement and that the state water development policy allows for the development of up to 80,000 acres in any four year period using trust water if the desired water use meets established standards. **Governor Evans** suggested that this is an area the committee should look at to see if it has been done.

Governor Evans added that there were several issues the Swan Falls Agreement did not consider. These include:

- • Diminished spring flows

- • Drought
- • What would happen to the minimum stream flows at Swan Falls if the drought continues

He noted that the Twin Falls Canal Company spring flows that go to the American Falls Reservoir have diminished 50%.

Governor Evans encouraged the committee and interested parties that continued negotiation and compromise will provide the means to reach a solution to the current problems.

Mr. Jim Jones said that if the state had not reached an agreement with Idaho Power, the issue would probably had ended up in a lengthy court battle. After the Supreme Court decision was reached, the Attorney General's Office decided the issue was very important. The intent in responding to the court's decision was to come up with a formula that would protect all of the existing users above Swan Falls and to set aside the maximum amount of water possible to be available for upstream beneficial uses.

Mr. Jones commented that one important result of the negotiations is that the state now has a block of water set aside for upstream uses. The compromise on the 3,900 cfs and 5,600 cfs at the Murphy gauge was the result of the state wanting to be sure it had an unfettered right to allocate the water above that amount of flow. This brought a bit of an impasse to the negotiations. The question was whether the water right above the minimums would be subordinated or subordinatable. In other words should the water right be left in Idaho Power's ownership or should the state assume ownership of that water. **Mr. Jones** stated that it was his position, as Attorney General at the time, that Idaho Power should have no ability to frustrate what the state was attempting to do. He went so far as to say he would not sign the agreement unless it was made clear that the state had complete control of that water right. **Mr. Jones** said that at this point Ray Rigby suggested development of a trust. He suggested having the Governor hold the water in trust for the benefit of subsequent appropriators. This would involve having the Governor hold the water in trust for the benefit of the people and Idaho Power Company until such time someone applied and received a water right. If the water right was above Milner Dam, it was assumed that the special new criteria did not have to be met. This responded to Idaho Power's concern that the closer to the Murphy gauge the water right was, the more impact an appropriation would have. This was eventually incorporated into the agreement.

Mr. Jones noted that at that time, everyone assumed that the flows would be there and that choking off the river at Milner would provide the necessary flows plus about an additional 600 cfs during the summer. The state had the ability, if the flows were not adequate, to tie up additional water to send down the river when necessary.

Additional safeguards that were written into the agreement included:

- • The PUC would approve the agreement and, if not, the state could go to FERC.
- • The state developed a water plan and asked FERC to approve that plan along with the agreement. (This was done to keep FERC from requiring development of a water plan

that the state had not approved.)

Mr. Jones concluded that after the agreement was approved, the group felt a compromise had been reached to meet Idaho Power's concerns while at the same time protecting the rights of the litigators by setting aside a block of water to be available for future growth and development upstream. He added that it was the concept of this group that trust water can be used for anything, including recharge by the Idaho Department of Water Resources if the appropriate steps were taken. This agreement was developed to provide an overall settlement scheme that would eliminate the need for litigation. It did not try to solve each and every issue.

Mr. Jim Bruce, former Chairman and CEO of Idaho Power Company, commented that, in his opinion, Idaho Power's development of the Snake River also helped develop the State of Idaho. The dams all the way up the river supply hydropower (the cheapest power available) to the people of Idaho. This has been a great advantage to every citizen in the State of Idaho, especially southern Idaho. He stated that the principle and intent of the agreement was to negotiate a settlement that would preserve the hydrosystem that existed at that time. In his opinion, Idaho Power had no choice but to initiate legal action to protect their water rights. **Mr. Bruce** said that once the Swan Falls Agreement was established, Idaho Power had no choice other than to enforce it in order to protect its water rights.

Mr. Ray Rigby, former State Senator and former chairman of Governor Evan's advisory committee, explained that when they were developing the Swan Falls Agreement, they knew a major public policy position had to be set. Idaho could not afford to freeze all upstream consumptive uses and other uses of water (the lifeblood of future development) to a downstream nonconsumptive use that would release waters that by and large had their origin in Idaho for out-of-state uses after going through the generators of the power company. **Mr. Rigby** said that something had to happen to protect the state and the water users.

Mr. Rigby went on to note that the following questions might help the committee find a solution to the problems that exist. These questions are:

- • 1. Is the State Water Plan adopted by the Idaho Water Resources Board and approved by the Legislature law or is it just policy and guidelines?
- • 2. Is the present policy of the Idaho Department of Water Resources on transfers of water rights too restrictive, causing loss of rights to holders?
- • 3. Are there enough outside experts in the fields of law and hydrology involved in this process?
- • 4. Should an independent analysis of the nature and availability of the millions of acre feet of water in the underground aquifer that exists under the State of Idaho be done?
- • 5. Is the statute on reasonable ground water pumping levels available and enforceable

enough to satisfy water users for all purposes including fish farming? If not, should it be amended? Is this not an area to be explored to obtain maximum use of the resources?

Mr. Pat Costello, now with the University of Idaho, joined the discussion by speaker phone. **Mr. Costello** said that being part of the negotiating team for the Swan Falls Agreement was an excellent experience. He noted that even though the Swan Falls Agreement was successful, there were a few miscalculations.

Mr. Costello went on to note that one miscalculation involved cost and the length of time adjudication would take. It was assumed that the cost would be about \$28 million to adjudicate the Snake River based on a ten year time frame for completion; twenty years later we are still working on it.

Another miscalculation, according to **Mr. Costello**, was a conclusion that the adjudication should cover all areas up to Lewiston. This was to ensure the participation of federal agencies and Indian Tribes. At that time, the committee did not envision how much that determination would add to the adjudication as a result of the Nez Perce claims.

Mr. Costello noted also that in order to get federal approval of the Swan Falls Agreement a bill was drafted and introduced in Congress late in the session. The bill was attached to an energy bill that passed very quickly but was eventually vetoed. Because of this, approval actually took another year.

Mr. Pat Kole explained that while the team was negotiating, they tried to stick to a set of principles that made it clear that no matter what issues arose down the road, there would be a process in place by which disputes could be resolved. These principles included balance, stability, predictability and consistency. The team tried to incorporate a new concept into Idaho law, that being that there would be important public policy considerations embodied in public interest criteria that would guide future water resource development in the state. As the process proceeded, and as they worked toward a comprehensive resolution of the issues that existed, it was envisioned that this agreement would be a complete and final resolution in the sense that the principles adopted and put into statute or into the contract would provide a process for the resolution of any unexpected contingencies that might develop in the future.

Mr. Kole noted that the team wanted to preserve the hydropower system in Idaho but they also wanted to make sure that future upstream development under the public interest criteria would be assured. Overriding everything they considered was the concept of state sovereignty over natural resources, water and its future.

Using that principle and looking at the agreement in hindsight, **Mr. Kole** stated that, in his opinion, the new issues that have arisen are clearly solvable. It is a legislative prerogative to step in and review the public interest criteria and to look at the agreement to make sure that any adjustments that can be made are made. The agreement itself has flexibility in the way that it was drafted but it also has consistency and predictability in the outcome that should flow. There

should not be an ability of any of the interest groups to insist or opt out of the process that was put in place by the Swan Falls Agreement. Instead, there needs to be compromise and a review of the balance that was struck to see if circumstances of the drought have changed what the outcome needs to be. Inherent within this concept is that this is a public process resolved through public debate and resolved in an open and democratic forum. In **Mr. Kole's** opinion, the process that was involved in the Swan Falls Agreement is the process that needs to be followed to come to a conclusion of the new challenges that have arisen. These challenges are not really that different from the original issues.

Mr. Roger Ling explained that, although he was not directly involved with the negotiations, he was kept up to date by **Attorney General Jim Jones** and provided input when asked. He also noted that the state was faced with a situation where Idaho Power Company had the unsubordinated water right that would have essentially prevented any future upstream development. Something had to be done to avoid this. It would have taken a great deal of litigation to resolve this and no one was sure how that litigation would turn out. Idaho Power subordinated all water rights that had been acquired up to 1984 after being given the minimum historic flows that had existed at Murphy at that time. This was a significant waiver of water rights.

Mr. Ling noted that in looking at the ability for future development that was arrived at by the agreement, this seemed like a win-win situation. There was water in the system that could be used for purposes other than power production and some power production was preserved by the minimum stream flows of 3,900 cfs in the summer and 5,600 cfs in the winter.

Mr. Ling stated that in the efforts to implement the agreement, as he recalls, there was no discussion of the issue of spring flows and ground water users and the rights they may have. In fact, conjunctive management was barely being discussed at that time.

The Swan Falls Agreement was a method to resolve the issue that arose as a result of the power rights of Idaho Power Company. There were some side issues that came up along the way such as adjudication and the State Water Plan but the primary focus was to resolve the conflict with Idaho Power.

Mr. Kent Foster stated that he became involved in the Swan Falls Agreement after the 1982 opinion. The primary issue was subordination. The Supreme Court stated that under existing acts of licensing, Idaho Power's rights at Swan Falls had not been subordinated. At that time the constitutionality of the Legislature saying those rights had been subordinated was being considered. Eventually this was done but it did not work and lawsuits were filed.

Mr. Foster explained that the evolution of water law since the Swan Falls Agreement has presented the state with the question of how to administer the use of ground water and surface water in a way that is fair to everyone. The goal today, in his opinion, is still to devote the water resources of the state to beneficial use in reasonable amounts through appropriation. This is not a bad policy but how to do it is a difficult question.

In response to a question from **Representative Jaquet** regarding the status of trust water development, **Director Karl Dreher, Idaho Department of Water Resources**, said that we do not have an exact number. There is a need to go back and review the permits issued subject to the trust water limitation and the conditions put on those permits. Having said that, **Director Dreher** noted that he was fairly certain that the state has not fully developed the trust water that was part of the agreement. **Mr. Norm Young** added that there is a 1993 report in his handout material giving the status of the trust water process. Due to the moratorium, this is the most up-to-date information that exists.

Representative Barraclough stated that more information on this would be very helpful to the committee discussion.

Senator Noh asked what the implications were of the “trust water line” that was drawn and how water rights above that line and water rights below that line would be affected differently by the minimum flow water allocation as it relates to the Swan Falls Agreement. **Mr. Jim Jones** explained that it was assumed anything above Milner would not have an impact and was excluded from trust water criteria. The trust water criteria would then apply to the water below Milner and the impact here would need to be calculated. **Mr. Ken Dunn** said that, as he recalls, the reason for the “trust water line” was to differentiate the areas in that anything down gradient from the line had the potential to directly impact the springs. If you go upgradient from the line, it becomes so dispersed that if you had some development you couldn’t tell where the impact was. With regard to the springs, **Mr. Dunn** said that the fish farmers, at least when he was director, in his opinion, were regarded as ground water users in relation to their use of the springs and like all ground water users, they had to seek their own water. If the flows went down, the fish farmers had to find water just as pumpers do.

Representative Bedke asked, having it said that the 3,900 cfs at Milner was not the Thousand Springs flow and vice versa, then in the agreement was the lack of a connection recognized between the 3,900 cfs at Murphy and the spring flows out of Thousand Springs. **Mr. Ling** explained that, in his opinion, the trust line was arbitrary (Later he clarified that this word may have been strong, that you just can not say 100 yards on one side is trust water and 100 yards on another is not. That is not to say that there wasn’t some data they used as a basis for the line.) and to be used as guidance tool. He said that there was no discussion of management between ground water users above the line and how that affected those below the line.

Representative Raybould commented that at the time of the Swan Falls Agreement, the state was still managing surface and ground water separately. Conjunctive management did not come about until the Snake River Basin Adjudication court mandated it. He asked whether, at the time of the Swan Falls Agreement, there any intent that the spring flows would be managed in conjunction with underground water or with surface water. **Mr. Dunn** stated that the spring flows and ground water were managed separately due to the fact that the state was not equipped to manage them together. There was a feeling that the spring flows themselves would not be protected from other development.

Mr. Ray Rigby commented that the fear was that if Swan Falls was not subordinated, no more development of property would take place. This was quite a shock. When Idaho Power reduced their necessary minimum flow from 4,500 cfs to 3,900 cfs, the state realized that difference was water that could be used to develop land. He added the “trust water line” was not actually discussed as part of the agreement.

Mr. Kole said that this discussion did come at some of the public meetings in the Upper Magic Valley and Hagerman. Some of the aquaculture interests came forward and asked what was in the agreement for them and were concerned that they were not protected. These interests were told they would have to rely on the public interest criteria and the legislative arena and the public process to protect their rights because the agreement contemplated future development. They were told that the public interest criteria was going to be their future protection. There was quite a heated debate on this issue from both sides.

Representative Barraclough explained that in 1959, Morris Lundorf, Chief of the USGS, took the inputs from each of the tributary basins along the Snake River Plain up to Yellowstone and developed flownets. These were used to represent cfs in the aquifer and show quite a division between the flows from the Idaho Falls area south and discharges in the springs from Blackfoot to Neeley. This is where the trust line came from. This was the best hydrology available at the time.

Director Dreher responded to **Mr. Dunn’s** remarks regarding the spring rights being considered ground water rights. **Director Dreher** said that the Idaho Department of Water Resources did not issue those permits and licenses as ground water rights. If that was the intent, that is not how it has been done. These spring water rights, just like the Swan Falls water right, were issued without subordination.

Representative Jaquet asked what basis was used in telling the spring users they had to rely on the public interest doctrine to protect themselves. **Mr. Kole** explained that the environmental community was very involved in the process with Governor Evans office. Due to the federal component involved with Representatives LaRocco and Stallings, a conduit existed and the environmental concerns had to be listened to in order to get the state and federal legislation passed. The basic belief was that the legislative arena and the shape of the legislation provided every interest group an opportunity to have a say in the eventual compromise. **Representative Jaquet** asked how the public interest doctrine has helped the spring uses over the last 20 years given their issues relating to the prior appropriation doctrine. **Mr. Kole** said that despite what the paperwork says, these rights were administered by the department as ground water rights.

In response to a question relating to costs from **Senator Andreason**, **Director Dreher** said that the cost of the adjudication has been about \$70 million so far. If private funds are included that cost is closer to \$80 million.

Senator Stennett inquired what the intent was of the relationship between trust water and the local public interest and how that would relate today to artificial recharge in the aquifer. **Mr.**

Jones said, in his opinion, the intent was to list a number of criteria for allocation of trust water that gave everyone an opportunity to give input into the process. It was their understanding that any potential use would be eligible and that the department would develop criteria that would more specifically direct what the public interest was. No particular interest was given more importance than another.

Representative Wood asked whether all of the water rights issued prior to 1984 have been identified. **Mr. Rigby** said that was one reason Idaho Power wanted adjudication and they were right. If water rights were going to be subordinated, all water rights prior to 1984 had to be identified. **Mr. Dunn** said this number is not a moving target and that a claim to a water right has to be filed. The old constitutional rights have been identified.

Senator Noh explained that the trust water was basically to be held by the Governor for the benefit of Idaho Power and the public based on the agreement. He asked whether, due to the Snake River Basin Adjudication, those trust water rights will need to be described. **Mr. Dunn** said that it was his understanding that the trust water rights would be held in trust by the Governor to be appropriated by future water users in the state and, once appropriated, it came out of the trust and was just like any other water right. **Mr. Jones** said that was the intent of the committee. **Mr. Ling** agreed with that. He added that the key is that those rights would be subject to a call to meet the 3,900 cfs minimum flow. **Speaker Newcomb** asked if a call was made by Idaho Power, would it only be on the trust water. **Mr. Dunn** explained that if the trust water is appropriated, it has to be above 3,900 cfs at Milner because it is just water that exists in the river.

Senator Noh asked what affects the minimum stream flow and what does not. He noted that it is his understanding that the agreement stipulates that Idaho Power can lease water from the water bank or acquire additional water that is not part of the minimum flow. He asked if this is true of water that other people might acquire to use and send down the river. **Mr. Dunn** said that the power company can lease water from the upper reservoirs and release it down. It is then the watermaster's job to get that water to them at the Murphy gauge. If the power company leases water, it is water above the 3,900 cfs. If the state or another entity wants to lease water to maintain the 3,900 cfs that is okay also.

Representative Nielsen suggested that, if there is an excess of the 5,600 cfs in the winter during these times of drought, could that water be used as a diversion into the North Side Canal Company for recharge while maintaining the minimum of 5,600 cfs. This would allow recharge to start now and then work up the plain as water becomes more abundant to get the recharge further up. He also suggested that, in the future, additional sites upstream could be substituted through dams or pipelines for Idaho Power to use instead of Swan Falls power production. This would allow more water to be kept further upstream to build up the Snake River Aquifer and have that as the state's reservoir to maintain flow.

Mr. Norm Young, former administrator for the Permitting and Regulatory Programs for the Idaho Department of Water Resources from 1977 to 2003, discussed the development of

the legislation required to implement the Swan Falls Agreement. He stated that this involved requirements for processing new applications for trust water and reprocessing permits that had not been developed before proceeding with development. This involved developing the public interest criteria for reallocating trust water and for rulemaking and moratorium authority.

Mr. Young noted that everyone involved, except FERC, timely implemented the items necessary to make the Swan Falls Agreement effective. Due to the fact FERC delayed until 1988, there was a period of time in which the Idaho Department of Water Resources was not able to proceed with processing permits.

Mr. Young distributed a packet of information containing the policy and implementation plan for processing water right filings in the Swan Falls area, an announcement of intent to write and promulgate rules and regulations for water appropriation and request for preliminary comment, and a copy of the order signed by Keith Higginson regarding significant reduction. These documents are on file at the Legislative Services Office. **Mr. Young** stated that it is important to notice how the Idaho Department of Water Resources went from the agreement and legislation to the point of processing new permits for trust water. He recalled as the notice of intent to adopt rules and regulations was issued, there were five public meetings held and when the rules were actually proposed, four public meetings were held. It is his recollection that these meetings were not well attended by the public.

The Idaho Department of Water Resources asked for public comment in the announcement of intent to write rules and regulations that included:

- • How to break the backlog?
- • How to determine the order of processing?
- • What should be in the requirements for timing and scope of information submitted?
- • What factors are appropriate for consideration of the local public interest?
- • What constitutes a significant reduction in water available to hyrdoelectric facilities?

Mr. Young stated that the rules needed to define trust water. The statutes and the agreement were not specific on what it was. It was his understanding at that time that trust water was any water in the Snake River upstream from Swan Falls over and above the minimum flow but less than the water right.

Mr. Young added that the source of that water also had to be identified. When the initial request for rulemaking went out, the department said anything above Swan Falls Dam that gets into the Snake River is trust water. At the public hearings, the people in the Upper Snake River area said they were not a source of trust water, that anyplace where the water is tributary above Milner Dam is not trust water. This question was address by the Legislature in 1986 that split the administration of the Snake River at Milner Dam. In the fall of 1986 the rules were adopted.

Mr. Young continued that the two documents, the S1180 contract and the Swan Falls

Agreement, were signed on October 25, 1984 and in his opinion the two are very much tied together. The S1180 contract subordinated Idaho Power's water rights to 1982 or earlier. This contract settled Idaho Power's claims versus the existing water rights upstream from them earlier than 1982 and provided for limited DCMI (domestic, commercial, municipal, industrial) development. What was left was the future development. This is what the Swan Falls Agreement dealt with. If the Swan Falls Agreement was to fail, there is language in it giving the ability to terminate the S1180 contract. The Supreme Court decision in 1982 affected not only future development but also water rights junior to 1901.

Mr. Young commented regarding earlier remarks that 600 cfs was the amount to be used, with an 80,000 acre foot limitation. He does not believe that is what the agreement talked about. Rather the agreement maintained, or managed the river based on minimum streamflows. If you look at hydrographs he provided in his handouts, at Murphy, if you were to take the unappropriated water and store it, then release it you could keep the minimum streamflow propped up. The ability to develop is not related to 80,000 acre feet or to 600 cfs, he believes those were viewed as being minimums. There is criteria for 20,000 af/year, or 80,000 af every four years, but these go off into perpetuity.

Mr. Young said that he is unsure whether the department started processing the applications that would meet the 1982 date in the contract. In order to meet the terms of the contract, it had to be developed and the application in place by 1982. He is unsure whether the department went back and began breaking the backlog or not. By 1988, when FERC finally became effective on May 28, the department realized there was a backlog that needed to be dealt with. There were 3,800 applications that were pending at that time as well as permits to be reprocessed. He reminded the committee that any permit that had been issued prior to Swan Falls had to be reprocessed if proof was not filed on it in 1985. Each application had to be sorted out according to the requirements of the agreement, the contract, the law and the rules. For example, applications that were filed in the non-trust water area and those filed in the trust water area after 1984 were handled differently.

Mr. Young explained that processing began and the rules and regulations had defined 2 acre feet per day, and then redefined that to be anything smaller than 200 acres, as not creating a significant reduction. As a result of this, the processing commenced with applications for those that had been in place prior to 1984 and applications for new development smaller than 200 acres. These smaller applications were handled first. Before larger applications could be dealt with, the issue of significant reduction had to be agreed upon. A memorandum of decision and order in the matter of evaluating whether developing new irrigated acres would cause a significant reduction was included in Mr. Young's handout and is on file at the Legislative Services Office. This decision was based on two hydrologic studies; one postulating 20,000 acres of development (and these were the 20,000 acres of permits that were being processed) and the other using 196,000 acres (the total number of acres for new development in all of the applications before the department at that time). The depletion was run through a power model that the PUC had and concluded that the impact on Idaho Power after 60 years at full development was one quarter of one percent. As a result of this, the director of Idaho

Department of Water Resources at the time determined that there would be no significant reduction in hydropower from processing all of the permits. Thus the department began processing all of the applications, regardless of the size.

Mr. Young's handouts included a trust water status report dated July, 1993, that shows the number of permits and acres that were processed from 1989-1993. On May 15, 1992, the general moratorium was put on most of southern Idaho and especially the Eastern Snake Plain. **Mr. Young** said that there has not been a lot of processing of new consumptive development since that time.

As the applications were processed, questionnaires were sent out to the persons seeking the permits and depending on certain answers some of them were exempt from the processing. The total trust approved acres at that time was 45,588.

Mr. Young noted that in terms of reallocating the trust water the question was whether new water rights were being created or whether the rights were just being transferred. In his opinion there was a problem with transferring the rights because they were going from a nonconsumptive use to a consumptive use in most cases. In his opinion these rights were appropriately assigned new priority dates to those permits for trust water.

Senator Noh asked for an explanation of the discussion that took place regarding fees and use of the revenue from those fees to obtain a block of storage water that would be owned by the state to allow the state to be better equipped to meet minimum stream flows in times of drought. **Mr. Young** explained that the section addresses conjunctive management. The drawing of the trust water line had the effect of identifying for the canal companies where the ground water users were located that were potentially affecting the canal companies water rights. In his opinion, it was more than coincidence that petitions were filed by the canal companies seeking to either expand water rights to include the nontrust water area or to have a moratorium in the nontrust water area. The ground water/surface water problem certainly seemed to be in existence at this point in 1988 according to **Mr. Young**. Those petitions were withdrawn when the director at that time issued a policy that described how ground water would be treated in the non-trust water area and how surface water rights would be protected, at least in a temporary way, by not forfeiting or by any other theory of law, losing their water rights to new ground water users if they did not continue their protests. So that was put on hold until the drought that started in 1992. To further answer **Senator Noh's** question, **Mr. Young** said that it was fairly obvious to the negotiators that the board was to obtain this block of water to protect minimum stream flows. As trust water permits were issued, the department reserved jurisdiction to apply an annual fee for the use of that water if rules and laws were passed to allow that to happen.

Representative Stevenson asked whether the trust water is listed as a condition of the water right in the adjudication or, whether the fact that the water is trust water shows up anywhere in a person's water right or license. **Mr. Tuthill, Idaho Department of Water Resources**, said it depends on the conditions of the permit or license and is reviewed in the adjudication.

Representative Stevenson asked about the priority date for trust water. **Mr. Young** said that

was an issue they struggled with. The question was whether the 1901 priority should be attached or should that date be the date of the filing for the unappropriated water because most people did not file for trust water. They filed for unappropriated water. Because they elected to treat them as if they were for unappropriated water, other than they added the significant reduction and public interest test, they are treated as unappropriated water and have a priority date based on the date they file.

In response to a question from **Senator Gannon** relating to “significant amounts,” **Mr. Young** explained that irrigation, no matter how many acres, was included. He stated that as far as he knows, DCMI was not kept track of.

Representative Jaquet asked how city use and semiconductor industrial use fit into the trust water scenario. **Mr. Young** said that if DCMI proposed use was greater than two acre feet per day depletion, that would be processed as trust water.

The next agenda item was working group reports.

Senator Geddes reported that the Bear River Working Group had not had a meeting since the last meeting of the regular committee. He stated that the water situation is improving somewhat in that area due to some significant rainfall in the last few weeks.

Senator Noh reported that at the last Eastern Snake Plain Aquifer Working Group meeting a presentation was given by the Spring Users in that area. He noted that the group was focusing on areas it felt needed to be explored in order to reach some agreements. The next meeting will have a presentation from the Ground Water Pumpers in the area.

Senator Noh added that he, Representative Raybould, Speaker Newcomb and Clive Strong have been meeting with individual stakeholders in the Eastern Snake Plain Aquifer area attempting to identify what it will take to be able to make proposals to the entire group.

Representative Stevenson reported that the Mountain Home Working Group met on June 15, 2004. This meeting included a presentation from Helen Harrington and John Westbrook outlining how they treated supplemental water rights and defined domestic water rights. The meeting included discussion on long-term solutions that hopefully will result in recommendations that can be made to the larger committee. **Representative Stevenson** said that due to the nature of the Mountain Home aquifer, it appears that some type of curtailment or reduction in the use of water will be necessary.

Representative Meyer reported that the North Idaho Working Group meeting was held on May 28, 2004. A staff member of a legislator in the State of Washington was in attendance at that meeting. Legal issues between the two states were discussed and it was determined that Washington can put a water call on Idaho in three ways. These include equitable apportionment, congressional apportionment and interstate compact. Mr. Clive Strong presented this information to the group. Water quality issues were also discussed as were minimum stream

flows. The group learned that the last time the minimum stream flow that has been set by Washington for the Spokane River was met was in 1917.

The Treasure Valley Working Group did not have a meeting to report on.

Senator Noh reported that a meeting was held with staff members of Idaho's congressional delegation discussing potential drought relief, expanded conservation reserve programs and other potential land retirement programs that might fit into resolutions of these issues. This was also a preplanning session for an August 17 and 18 meeting with USDA leaders. The meeting will be hosted by Senator Crapo and Congressman Simpson in Idaho.

Senator Noh said that at that meeting they learned that federal payments for conservation reserves are based solely on average soil types within a county. The maximum expected payment from the federal level is relatively small in relation to what it would appear to be necessary to retire irrigated land.

Senator Noh explained that discussion is ongoing with high lift pumpers in terms of negotiating ways to find high lift pumping water.

Senator Noh also notified the committee that the River Governance Group, that includes the States of Oregon, Washington, Montana and Idaho, will be meeting in Idaho on August 16 and 17. Part of the agenda will include a review of the Nez Perce Settlement and discussion regarding the Rathdrum Prairie Aquifer issues. Another agenda item will include discussion of water quality/quantity implications of the Big Rock Creek mining operation in Montana that eventually affects Lake Pend Oreille.

Senator Noh moved that the minutes from the May 6 and June 3 meetings be approved.

Representative Stevenson seconded and the minutes were approved unanimously.

The meeting was adjourned at 2:30.

Exhibit S

Swan Falls Agreement

AGREEMENT

This Agreement is made and entered into among the State of Idaho, by and through the Governor, hereinafter referred to as "State"; John V. Evans, in his official capacity as Governor of the State of Idaho; Jim Jones, in his official capacity as Attorney General of the State of Idaho; and Idaho Power Company, a corporation hereinafter referred to as "Company".

1. Effective Date

This Agreement shall take effect upon execution, except as to paragraphs 7, 8, and 11.

2. Executive Commitment

When the parties agree on certain actions to be taken by State, it is their intent to commit the executive branch of Idaho state government, subject to constitutional and statutory limitations, to take those actions.

3. Attorney General

Jim Jones is a party to this Agreement solely by reason of his official position as counsel for the State of Idaho and its agencies in Idaho Power Company v. State of Idaho, Ada County Civil Case No. 62237 and Idaho Power Company v. Idaho Department of Water Resources, Ada County Civil Case No. 81375.

4. Good Faith

When the parties agree to jointly recommend a particular piece of legislation or action by another entity, each party agrees to actively and in good faith support such legislation or action.

The State shall enforce the State Water Plan and shall assert the existence of water rights held in trust by the State and that the Snake River is fully appropriated as needed to enforce the State Water Plan. State and Company shall not take any position before the legislature or any court, board or agency which is inconsistent with the terms of this agreement.

5. Stay Of Current Court And Regulatory Action

A. The parties shall file a motion with the court in Ada County Civil Case Numbers 81375 and 62237, seeking a

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EX. NO.	2
DATE	10-31-91
BURNHAM, HABEL & ASSOCIATES, INC.	

stay of further proceedings until seven days following the adjournment of the First Regular Session of the 48th Idaho Legislature, except as to preservation of testimony pursuant to the Idaho Rules of Civil Procedure, completion of designated discovery filed by the State of Idaho and dismissal of various defendants by Company. The State shall designate in writing, within fifteen (15) days from the execution of this Agreement, those items of its discovery that must be responded to by Company. The Company shall respond to those items of discovery designated by the State within ninety (90) days from execution of this Agreement.

- B. The parties shall request the Federal Energy Regulatory Commission (FERC) to stay any subordination-related decisions in any Company project listed in paragraph 7 licensing or relicensing proceeding pending implementation of this Agreement except as contemplated in paragraph 12 of this Agreement. The parties acknowledge, however, that FERC could independently take action prejudicial to their interests and, in such event, the parties may take reasonable actions necessary to protect their interests. Further, the State shall not file any motions to intervene in Project Numbers 2777 (Upper Salmon) and 2778 (Shoshone Falls); however, by agreeing to this provision, the Company in return waives any defense to the timeliness of a motion to intervene caused by this Agreement in the event this Agreement is not implemented. Company is not agreeing, however, that a motion to intervene would be timely if filed now.
- C. The parties shall not attempt to influence any executive agency of the United States to take a particular position regarding subordination in any Company FERC licensing or relicensing proceeding pending implementation of this Agreement.

6. Legislative Program

The parties agree to propose and support the following legislation to implement this Agreement:

- A. Enactment of Public Interest Criteria as set forth in Exhibit 1 attached hereto.

- B. Funding for a general adjudication of the Snake River Basin generally as set forth in Exhibit 2 attached hereto.
- C. Establishment of an effective water marketing system.
- D. Funding for hydrologic and economic studies, as set forth in Exhibit 3 attached hereto.
- E. Allocation of gains upon sale of utility property as set forth in Exhibit 4 attached hereto.
- F. Limitations on IPUC jurisdiction as set forth in Exhibit 5 attached hereto.
- G. Rulemaking and moratorium authority for Idaho Department of Water Resources generally as set forth in Exhibit 8 attached hereto.

7. Company's Water Right

State and Company agree that Company's water right shall be as follows (Bracketed names used below refer to Company projects):

- A. State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad), 37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls) entitle the Company to an unsubordinated right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, both to be measured at the Murphy U.S.G.S. gauging station immediately below Swan Falls. These flows are not subject to depletion. The Murphy gauging station is located at latitude 43° 17' 31", Longitude 116° 25' 12", in NW1/4NE1/4SE1/4 of Section 35 in Township 1 South, Range 1 West, Boise Meridian, Ada County Hydrologic Unit 17050103, on right bank 4.2 miles downstream from Swan Falls Power plant, 7.5 miles NE of Murphy, at river mile 453.5.
- B. The Company is also entitled to use the flow of the Snake River at its facilities to the extent of its actual beneficial use but not to exceed those amounts stated in State Water License Numbers 36-2013 (Thousand Springs), 37-2128 & 37-2472 (Lower Malad),

37-2471 (Upper Malad), 36-2018 (Clear Lake), 36-2026 (Sand Springs), 02-2057 (Upper Salmon), 02-2001A, 02-2001B, 02-2059, 02-2060 (Lower Salmon), 02-2064, 02-2065 (Bliss), 02-2056 (Twin Falls), 02-2036 (Shoshone Falls), 02-2032, 02-4000, 02-4001, and Decree Number 02-0100 (Swan Falls), but such rights in excess of the amounts stated in 7(A) shall be subordinate to subsequent beneficial upstream uses upon approval of such uses by the State in accordance with State law unless the depletion violates or will violate paragraph 7(A). Company retains its right to contest any appropriation of water in accordance with State law. Company further retains the right to compel State to take reasonable steps to insure the average daily flows established by this Agreement at the Murphy U.S.G.S. gauging station. Average daily flow, as used herein, shall be based upon actual flow conditions; thus, any fluctuations resulting from the operation of Company facilities shall not be considered in the calculation of the minimum daily stream flows set forth herein. This paragraph shall constitute a subordination condition.

- C. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to the uses of those persons dismissed from Ada County Case No. 81375 pursuant to the contract executed between the State and Company implementing the terms of I.C. §§ 61-539 and 61-540.
- D. The Company's rights listed in paragraph 7(A) and 7(B) are also subordinate to those persons who have beneficially used water prior to October 1, 1984, and who have filed an application or claim for said use by June 30, 1985.
- E. Company's ability to purchase, lease, own, or otherwise acquire water from sources upstream of its power plants and convey it to and past its power plants below Milner Dam shall not be limited by this agreement. Such flows shall be considered fluctuations resulting from operation of Company facilities.
- F. Upon implementation of this Agreement, State and Company shall consent to entry of decrees in Ada County Civil Case Nos. 62237 and 81375 that describe the Company's water right as provided in paragraphs 7(A) through 7(E).

8. Damages Waiver

Company waives any claim against the State or its agencies for compensation or damages it may have or that may arise from any diminution in water available to Company at its facilities as a result of this Agreement. Company waives any claim for compensation or damages from any use approved by the state in accordance with paragraph 7B. Company retains its right to seek injunctions, compensation, damages, or other relief from any future appropriator, as defined in paragraph 7(B), whose use of water violates or will violate the Company's water right of 3900 c.f.s. average daily flow from April 1 to October 31, and 5600 c.f.s. average daily flow from November 1 to March 31, as measured at the Murphy gauging station, and also retains its rights against the state and its agencies as set out in paragraph 7(B).

9. Proposed 1180 Contract

The parties acknowledge that the Governor and the Company have finalized the terms of a contract that would implement the provisions of Senate Bill 1180 of the First Regular Session of the Idaho Legislature, presently codified as §§ 61-539 and 61-540, Idaho Code which is being executed on this date.

10. Agreement Not An Admission

The parties agree that this Agreement represents an attempt to compromise pending litigation, and it shall not be considered an admission, waiver, or abandonment of any issue of fact or law by any party, and no party will assert or contend that paragraphs 7, 8, and 11 have any legal effect until this Agreement is implemented by the accomplishment of the acts described in paragraph 13.

11. Status of State Water Plan

State and Company agree that the resolution of Company's water rights and recognition thereof by State together with the Idaho State Water Plan provide a sound comprehensive plan for the management of the Snake River watershed. Thus, the parties acknowledge that this Agreement provides a plan best adapted to develop, conserve, and utilize the water resources of the region in the public interest. Upon implementation of this agreement, State and Company will present the Idaho State Water Plan and this document to FERC as a comprehensive plan for the management of the Snake River Watershed.

12. Regulatory Approvals

- A. Within 45 days of the execution of this Agreement, Company shall file appropriate pleadings or other documents with the Idaho Public Utilities Commission (IPUC), to obtain an order determining that the execution and implementation of this Agreement is in the public interest, and does not constitute an abandonment, relinquishment or transfer of utility property. Such pleadings or other documents shall also provide that the order shall state that any effect upon the Company's hydro generation resulting from execution and implementation of this Agreement shall not be grounds now or in the future for a finding or an order that the Company's rate base or any part thereof is overstated or that any portion of its electrical plant in service is no longer used and useful or not devoted to public service, nor will such effect upon the Company's hydro generation be grounds for a finding or an order reducing the Company's present or future revenue requirement or any present or future rate, tariff, schedule or charge.

In the event the IPUC does not issue an order acceptable to the parties, the parties will seek appropriate remedial legislation.

- B. i. Within forty-five (45) days of the execution of this Agreement, the Company shall file with FERC a request for a declaratory ruling that the implementation of this agreement assures a sufficient supply of water for Project Numbers 1975 (Bliss), 2061 (Lower Salmon), 2777 (Upper Salmon), 2055 (C.J. Strike), 2778 (Shoshone Falls), 18 (Twin Falls), 2726 (Upper and Lower Malad), and 503 (Swan Falls).
- ii. Within forty-five (45) days of implementation of this Agreement, the Company shall submit this Agreement and the consent decree to FERC in the proceedings for relicensing of Project Numbers 18 (Twin Falls), and 503 (Swan Falls) and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water rights in those proceedings.
- iii. When any project listed in (i) hereof is hereafter due for relicensing proceeding, Company

shall submit this Agreement to FERC in the relicensing proceeding, and the State and Company shall request that FERC recognize this Agreement as a definition of the Company's water right in those proceedings.

- C. The Governor and Attorney General on behalf of the State and its agencies shall seek intervention in support of the Company's efforts before the IPUC and FERC, and shall actively support the issuance of acceptable orders by both Commissions, and shall provide authorized witnesses to testify in the proceedings at the request of Company.
- D. Company shall, if necessary, file appropriate pleadings or other documents with the Public Utility Commissioner of Oregon for an order similar to that stated in paragraph 12(A). Such filing, if necessary, shall be done within forty-five (45) days of the execution of this Agreement.

13. Conditions on Effectiveness

- A. The provisions of paragraphs 7, 8, and 11 shall not be binding and effective until each of the following conditions have been implemented:
 - i. Amendment of the State Water Plan to implement the provisions of Exhibit 6;
 - ii. Enactment of the legislative program outlined in paragraph 6;
 - iii. Issuance of an appropriate order by IPUC as set forth in paragraph 12(A), or enactment of appropriate legislation by the State of Idaho, as set forth in Exhibit 5;
 - iv. Issuance of an appropriate order by FERC in a form acceptable to the parties as set out in paragraph 12(B)(i);
 - v. Dismissal with prejudice of the proceeding pending before the IPUC in Case No. U-1006-124;
 - vi. Issuance of an appropriate order by the Public Utility Commissioner of Oregon if Company has requested one; and

vii. Enactment by the State of Idaho of subordination legislation, as set forth in Exhibits 7A and 7B attached to this Agreement.

B. In the event any of these conditions are not implemented, or should this Agreement be terminated as provided in paragraph 16, then this Agreement shall be void.

14. Authority of Department of Water Resources and Idaho Water Resource Board Not Affected

This Agreement shall not be construed to limit or interfere with the authority and duty of the Idaho Department of Water Resources or the Idaho Water Resource Board to enforce and administer any of the laws of the state which it is authorized to enforce and administer.

15. Waiver, Modification or Amendment

No waiver, modification, or amendment of this Agreement or of any covenants, conditions, or limitations herein contained shall be valid unless in writing duly executed by the parties and the parties further agree that the provisions of this section may not be waived, modified, or amended except as herein set forth.

16. Termination of Contract

This Agreement shall terminate upon the failure to satisfy any of the conditions stated in paragraph 13. The parties shall meet on May 15, 1985, to determine if the contract shall be continued or terminated.

17. Subsequent Changes In Law

This Agreement is contingent upon certain enactments of law by the State and action by the Idaho Water Resource Board. Thus, within this Agreement, reference is made to state law in defining respective rights and obligations of the parties. Therefore, upon implementation of the conditions contained in paragraph 13, any subsequent final order by a court of competent jurisdiction, legislative enactment or administrative ruling shall not affect the validity of this Agreement.

18. Successors

The provisions of this Agreement shall bind and inure to the benefit of the respective successors and assigns of the parties.

19. Entire Agreement

This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.

20. Effect of Section Headings

The section headings appearing in this Agreement are not to be construed as interpretations of the text but are inserted for convenience and reference only.

21. Multiple Originals

This Agreement is executed in quadruplicate. Each of the four (4) Agreements with an original signature of each party shall be an original.

IN WITNESS WHEREOF, the parties have executed this Agreement at Boise, Idaho, this 25th day of October, 1984.

STATE OF IDAHO

IDAHO POWER COMPANY

By: 

JOHN V. EVANS
Governor of the
State of Idaho

By: 

JAMES E. BRUCE
Chairman of the Board
and Chief Executive
Officer

By: 

JIM JONES
Attorney General of the
State of Idaho

ATTEST:



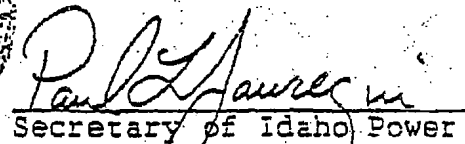
PETE T. CENARRUSA
Secretary of State

(Seal of the State of Idaho)

(Corporate Seal of Idaho
Power Company)



ATTEST:


Secretary of Idaho Power

CERTIFICATE OF SECRETARY

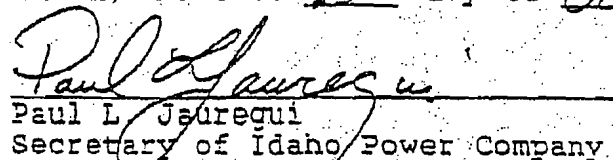
Paul L. Jauregui, as secretary of Idaho Power Company, a Maine Corporation, hereby certifies as follows:

(1) That the corporate seal, or facsimile thereof, affixed to the instrument is in fact the seal of the corporation, or a true facsimile thereof, as the case may be; and

(2) That any officer of the corporation executing the instrument does in fact occupy the official position indicated, that one in such position is duly authorized to execute such instrument on behalf of the corporation, and that the signature of such officer subscribed thereunto is genuine; and

(3) That the execution of the instrument on behalf of the corporation has been duly authorized.

In witness whereof, I, PAUL L. JAUREGUI, as the secretary of Idaho Power Company, a Maine corporation, have executed this certificate and affixed the seal of Idaho Power Company, a Maine Corporation, on this 25th day of October, 1984.


Paul L. Jauregui
Secretary of Idaho Power Company

CERTIFICATE OF SECRETARY OF STATE
OF THE STATE OF IDAHO

PETE T. CENARRUSA, as Secretary of State of the State of Idaho, hereby certifies as follows:

1. That the State of Idaho seal, or facsimile thereof, affixed to the instrument is in fact the seal of the State of Idaho, or a true facsimile thereof, as the case may be; and
2. That the officials of the State of Idaho executing the instrument do in fact occupy the official positions indicated; that they are duly authorized to execute such instrument on behalf of the State of Idaho, and that the signatures of such officials of the State of Idaho subscribed thereunto are genuine; and
3. That the execution of the instrument on behalf of the State has been duly authorized.

IN WITNESS WHEREOF, I, Pete T. Cenarrusa, Secretary of State of the State of Idaho, have executed this Certificate and affixed the seal of the State of Idaho on this 25th day of October, 1984.



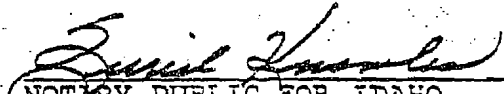
PETE T. CENARRUSA
Secretary of State
State of Idaho

STATE OF IDAHO)
) SS.
County of Ada)

On this 25th day of October, 1984, before me, a Notary Public, in and for said County and State, personally appeared JAMES E. BRUCE, and PAUL L. JAUREGUI, known or

identified to me to be the President and Secretary, respectively, of Idaho Power Company, the corporation that executed the foregoing instrument, and acknowledged to me that such corporation executed the same.

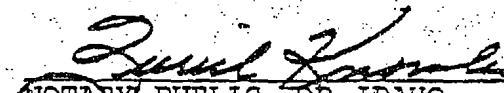
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho

STATE OF IDAHO)
) ss.
County of Ada)

On this 25th day of October, 1984, before me, a Notary Public, in and for said County and State, personally appeared JOHN V. EVANS, known or identified to me to be the Governor of the State of Idaho; JIM JONES, known or identified to me to be the Attorney General of the State of Idaho; and PETE T. CENARRUSA, known to me to be the Secretary of the State of Idaho; and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.


NOTARY PUBLIC FOR IDAHO
Residing at Boise, Idaho

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO WATER RIGHTS FOR HYDROPOWER PURPOSES; AMENDING SECTION 42-203, IDAHO CODE, BY MAKING CERTAIN ORGANIZATIONAL CHANGES AND BY PROVIDING FOR THE MAILING OF NOTICES TO PAID SUBSCRIBERS; AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203C TO PROVIDE THAT THE DEPARTMENT SHALL CONSIDER PUBLIC INTEREST CRITERIA WHEN AN APPLICANT'S APPROPRIATION WOULD SIGNIFICANTLY REDUCE THE AMOUNT OF WATER AVAILABLE FOR A SUBORDINATED POWER USE; AND AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203D TO PROVIDE THAT THE DEPARTMENT SHALL REVIEW ALL PERMITS ISSUED PRIOR TO THIS ACT'S EFFECTIVE DATE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-203, Idaho Code be, and the same is hereby amended to read as follows:

42-203. NOTICE UPON RECEIPT OF APPLICATION -- PROTEST -- HEARING AND FINDINGS -- APPEALS. ~~On and after the passage/ approval and effective date of this section/~~ (1) Upon receipt of an application to appropriate the waters of this state, the department of water resources, shall prepare a notice in such form as the department may prescribe, specifying: (a) the number of the application; and (b) the

date of filing thereof/; (c) the name and post-office address of the applicant/ (d) the source of the water supply/; (e) the amount of water to be appropriated/ (f) in general the nature of the proposed use/ (g) the approximate location of the point of diversion/ (h) and the point of use/. The department shall also state in said notice that any protest against the approval of such application, in form prescribed by the department, shall be filed with the department within ten (10) days from the last date of publication of such notice.

(2) The director of the department of water resources shall cause the notice to be published in a newspaper printed within the county wherein the point of diversion lies, or in the event no newspaper is printed in said county, then in a newspaper of general circulation therein. When the application proposes a diversion in excess of 20 c.f.s. or 2,000 acre feet, the director shall cause the notice to be published in the newspaper(s) sufficient to achieve statewide circulation. This notice shall be published at least once a week for two (2) successive weeks.

(3) The director of the department shall cause a copy of the notice of application to be sent by ordinary mail to any person who requests in writing to receive any class of notices of application and who pays an annual mailing fee as established by departmental regulation.

(4) Any person, firm, association or corporation concerned in any such application may, within the time allowed in the notice of application, file with said director of the department of water resources a written protest against the approval of such application, which protest shall state the name and address of protestant and shall be signed by him or by his agent or attorney and shall clearly set forth his objections to the approval of such application. Hearing upon the protest so filed shall be held within sixty (60) days from the date such protest is received. Notice of this hearing shall be given by mailing notice not less than ten (10) days before the date of hearing and shall be forwarded to both the applicant and the protestant, or protestants, by certified mail. Such notice shall state the names of the applicant and protestant, or protestants, the time and place fixed for the hearing and such other information as the director of the department of water resources may deem advisable. In the event that no protest is filed, then the director of the department of water resources may forthwith approve the application, providing the same in all respects conforms with the requirements of this chapter, and with the regulations of the department of water resources.

(5) Such hearing shall be conducted in accordance with the provisions of section 42-1701A(1) and (2), Idaho Code. The director of the department of water resources shall find and determine from the evidence presented to what use or uses the water sought to be appropriated can be and are intended to be applied. In all applications whether protested or not protested, where the proposed use is such (a1) that it will reduce the quantity of water under existing water rights, or (b2) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c3) where it appears to the satisfaction of the department that such application is not made in good faith, is made for delay or speculative purposes, or (d4) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e5) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use; The director of the department of water resources may reject such application and refuse issuance of a permit therefor, or may partially approve and grant a permit for a smaller less quantity of water than applied for, or may grant permit upon conditions. The provisions of this section shall apply to any boundary stream between this and any other state in all cases where the water sought to be appropriated has its source largely within the state, irrespective of the location of any proposed power generating plant.

(6) Any person or corporation who has formally appeared at the hearing, feeling aggrieved by the judgment of the director of the department of water resources, may seek judicial review thereof in accordance with section 42-1071A(4), Idaho Code.

SECTION 2. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION to be known and designated as Section 42-203C, Idaho Code, and to read as follows:

42-203C. PUBLIC INTEREST DETERMINATION — CRITERIA — WEIGHT — BURDEN OF PROOF.

(1) If an applicant intends to appropriate water which is or may be available for appropriation by reason of a subordination condition applicable to a water right for power purposes, then the director shall consider, prior to approving the application, the criteria established in section 42-203A, and whether the proposed use would significantly reduce, individually or cumulatively with other uses, the amount of water available to the holder of a water right used for power production and, if so, whether the proposed use is in the public interest.

(2)(a) The director in making such determinations for purposes of this section shall consider:

- (i) the potential benefits, both direct and indirect, that the proposed use would provide to the state and local economy;
- (ii) the economic impact the proposed use would have upon electric utility rates in the State of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact, to the state and local economy;
- (iii) the promotion of the family farming tradition;
- (iv) the promotion of full economic and multiple use development of the water resources of the State of Idaho;
- (v) whether the proposed development conforms to a staged development policy of up to 20,000 acres per year or 80,000 acres in any four-year period in the Snake River Basin above the Murphy gauge.

No single factor enumerated above shall be entitled to greater weight by the director in arriving at this determination.

(b) The burden of proof under this section shall be on the protestant.

SECTION 3. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION to be known and designated as Section 42-203D, Idaho Code, and to read as follows:

42-203D. REVIEW OF PERMITS -- OPPORTUNITY FOR HEARING. The department shall review all permits issued prior to the effective date of this section, except to the extent a permit has been put to beneficial use prior to July 1, 1985, to determine whether they comply with the provisions of chapter 2, title 42, Idaho Code. If the department finds that the proposed use does not satisfy the criteria of chapter 2, title 42, Idaho Code, then the department shall either cancel the permit or impose the conditions required to bring the permit into compliance with chapter 2, title 42, Idaho Code. If the department finds that the permit satisfies the criteria established by chapter 2, title 42, Idaho Code, then the department shall enter an order continuing the permit.

The department shall provide an opportunity for hearing in accordance with section 1701A, title 42, Idaho Code and sections 5209 through 5215, title 67, Idaho Code, for each holder of a permit that is either cancelled or made subject to new conditions.

LEGISLATURE OF THE STATE OF IDAHO
Forty-eighth Legislature First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

RELATING TO THE ADJUDICATION OF WATER RIGHTS, AMENDING CHAPTER 14, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1406A PROVIDING FOR THE COMMENCEMENT OF AN ADJUDICATION OF THE WATER RIGHTS OF THE SNAKE RIVER BASIN; AMENDING SECTION 42-1414, IDAHO CODE, TO MODIFY THE SCHEDULE OF FEES FOR FILING A NOTICE OF CLAIM IN A WATER RIGHTS ADJUDICATION PROCEEDING AND PROVIDING A PROCEDURE FOR COLLECTION OF THE FEES; AMENDING CHAPTER 17, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-1777 PROVIDING FOR THE CREATION OF THE WATER RESOURCES ADJUDICATION ACCOUNT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF IDAHO:

SECTION 1. That Chapter 14, Title 42, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 42-1406A, Idaho Code, and to read as follows:

42-1406A. SNAKE RIVER BASIN ADJUDICATION - COMMENCEMENT.

(1) Effective management in the public interest of the waters of the Snake River Basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from that system be determined. Therefore, the director of the department of water resources on or after July 1, 1985 shall petition the district court of Ada County to commence an adjudication of the water rights of the Snake River Basin either through initiation of a new proceeding or the enlargement of an ongoing adjudication proceeding. The petition shall describe:

(a) the boundaries of the entire system within the state to be adjudicated;

(b) the boundaries of any hydrologic sub-basins within the system for which the director intends to proceed separately with respect to the actions required or authorized to be taken pursuant to sections 42-1408 through 42-1413, Idaho Code; and

(c) the uses of water, if any, within the system that are recommended to be excluded from the adjudication proceeding.

(2) Upon issuance of an order by the district court which:

(a) authorizes the director to commence an investigation and determination of the various water rights existing within the system;

(b) defines the system boundaries;

(c) defines the boundaries of any hydrologic sub-basins within the system for which proceedings may advance separately pursuant to sections 42-1408 through 42-1412, Idaho Code; and

(d) defines any uses of water excluded from the adjudication proceeding;

the adjudication shall proceed in the manner provided by the provisions of chapter 14, title 42, Idaho Code, with the exception of sections 42-1406 and 42-1407.

SECTION 2. That section 42-1414, Idaho Code, be, and the same is hereby amended to read as follows:

42-1414. FEES FOR FILING NOTICE OF CLAIM - In order to provide an adequate and equitable cost-sharing formula for financing the costs of adjudicating water rights the department of water resources shall accept no notice of claim required under the provisions of section 42-4109, Idaho Code, unless such notice of claim is submitted with a filing fee based upon the quantity of water claimed which shall be determined on the same basis as the fee for filing an application for a permit to appropriate the public waters of this state as provided in section 42-221, Idaho Code, except that where such claim is in connection with a water right established pursuant to a valid permit or license previously issued by the department of water administration or a water right which has previously been adjudicated by a state or federal court, the claimant shall pay a filing fee of only

ten dollars (\$10.00) fee schedule set forth below. Failure to pay the variable water use fee in accordance with the timetable provided shall be cause for the department to reject and return the notice of claim to the claimant. Provided/ However/ that no filing fee shall be required with any notice of claim when proceedings for adjudication involving such claim were under way when this act/ Chapter 153/ Laws of 1971/ was enacted/ The fee schedule set forth below applies to adjudication proceedings commenced or enlarged on or after July 1, 1985 and to adjudication proceedings for which a proposed finding of water rights has not been filed with the appropriate district court by the department of water resources prior to July 1, 1985.

A. Flat fee per claim filed:

1. Claims for domestic and/or stock-watering rights \$25.00
2. Claims for all other rights. \$50.00

B. Additional variable water use fee for each claim filed:

1. Irrigation use: \$ 1.00 per acre.
2. Power: \$ 25.00 per c.f.s.
3. Aquaculture: \$ 10.00 per c.f.s.
4. Municipal, Industrial, Commercial, Mining, Heating, Cooling: \$100.00 per c.f.s.
5. Public: \$100.00 per c.f.s.
6. Miscellaneous: flat fee only.

C. Payment of a variable water use fee of more than \$1,000.00 may be spread out over as many as five annual equal payments with 10 percent interest accruing on the unpaid balance. All fees collected by the department pursuant to this section shall be placed in the water resources adjudication account established by section 42-1777, Idaho Code.

SECTION 3. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended by the addition of a NEW SECTION, to be known and designated as Section 42-1777, Idaho Code, and to read as follows:

42-1777. WATER RESOURCES ADJUDICATION ACCOUNT. - A water resource adjudication account is hereby created and established in the agency asset fund. Fee moneys in the account

are to be utilized by the department of water resources, upon appropriation by the legislature, to pay the costs of the department attributable to the Snake River Basin adjudication provided for by section 42-7406A, Idaho Code.

The state treasurer is directed to invest all moneys in the account. All interest or other income accruing from such investment shall accrue to the account.

LEGISLATURE OF THE STATE OF IDAHO
Forty-eighth Legislature First Regular Session - 1985

IN THE _____

_____ BILL NO. _____

BY _____

AN ACT

APPROPRIATING MONEYS TO THE OFFICE OF THE GOVERNOR FOR THE
DIVISION OF FINANCIAL MANAGEMENT, FOR FISCAL YEAR 1986.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. There is hereby appropriated to the Office of the Governor from the general account the amount of \$200,000 to be used for the purpose of conducting hydrologic and economic studies of the Snake River Basin. A technical advisory committee named by the Governor shall oversee the studies.

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE

BILL NO.

BY

AN ACT

AMENDING CHAPTER 5, TITLE 61, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 61-502B TO PROVIDE THAT GAIN UPON SALE OF A PUBLIC UTILITY'S WATER RIGHT SHALL ACCRUE TO THE BENEFIT OF THE RATEPAYERS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1 - That Chapter 5, Title 61, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 61-502B, Idaho Code, and to read as follows:

61-502B. ALLOCATION OF GAIN UPON SALE OF WATER RIGHT.

The gain upon sale of a public utility's water right used for the generation of electricity shall accrue to the benefit of the ratepayers.

MEMORANDUM

SUBJECT: PROPOSED LEGISLATION RELATING TO UTILITIES COMMISSION AND ITS JURISDICTION TO REVIEW REVENUE REQUIREMENT AND OTHER REGULATORY IMPLICATIONS OF SWAN FALLS COMPROMISE.

SECTION 1 -- FINDINGS AND STATEMENT OF PURPOSE.--After hearing testimony from the Office of the Governor, the Office of the Attorney General, the Idaho Public Utilities Commission, the Idaho Department of Water Resources, the Idaho Water Resources Board, the Idaho Department of Fish and Game, other governmental entities and other interested groups and individuals of the State of Idaho, the legislature hereby finds that while portions of the testimony differ, the [describe the settlement and stipulation] is in the public interest for all purposes, including but not limited to, all purposes under the Public Utilities Law, as amended. Implementation of the settlement will resolve continuing controversy over electric utility water rights in the Snake River Basin above Murphy U.S.G.S gaging station. That controversy has rendered the amount of the water available for hydropower uncertain, thus placing at risk both the availability of low-cost hydropower to the ratepayers and the state's ability to manage an increasingly scarce resource. This settlement balances all of the parties' concerns and insures that existing hydropower-generating facilities will remain useful, that ratepayers will not be burdened with excessive costs, and that availability of water for additional domestic, manufacturing, and agricultural uses will judiciously expand.

SECTION 2 -- PUBLIC UTILITIES COMMISSION--JURISDICTION.--The Idaho Public Utilities Commission shall have no jurisdiction to consider in any proceeding, whether instituted before or after the effective date of this act, any issue as to whether any electric utility, (including Idaho Power Company), should have or could have preserved, maintained or protected its water rights and hydroelectric generation in a manner inconsistent with [describe the settlement and stipulation].

SECTION 3 -- IPUC--EFFECT OF AGREEMENT.--In any proceeding before the Idaho Public Utilities Commission, including but not limited to a proceeding in which the commission is setting or reviewing the revenue requirement of any electric utility (including Idaho Power Company), the commission shall accept as reasonable and in the public interest for all purposes, the [describe the settlement and stipulation], including without limitation the effects of implementation of such [describe the settlement and stipulation] on the utility's revenue requirements and hydroelectric generation.

SECTION 4 -- EXEMPTION.--Implementation of the []
shall not constitute a sale, assignment, conveyance or
transfer within the meaning of §§61-327, 61-328, 61-329,
61-330, and 61-331, I.C., to the extent any of those sections
may apply.

EXHIBIT 6

The executive branch of the State of Idaho and the Idaho Power Company agree to recommend that the following positions be incorporated into policy 32 of the state water plan.

1. The minimum daily flow at the Murphy gauging station should be increased to 3,900 c.f.s. from April 1 through October 31 and to 5,600 c.f.s from November 1 to March 31.
2. The minimum daily flow at the Milner gauging station shall remain at zero c.f.s.
3. New storage projects upstream from the Murphy gauge should only be approved after it is determined that existing storage above Murphy is fully utilized.
4. The Idaho Water Resource Board should consider reserving a block of water for future DCMI purposes.
5. There should be an express recognition of the adverse effects of diversions for storage from the mainstream of the Snake River between Milner and Murphy on hydropower production from November 1 to March 31. In this regard, approval of any new storage projects that contemplate the diversion of water during the November 1 to March 31 period from the mainstream of the Snake River between Milner Dam and Murphy Gauge should be coupled with provisions that mitigate the impact such depletions would have on the generation of hydropower.

[The parties are proposing a policy which is neutral on the question of which Company facilities should be considered in mitigation decisions. At any later time the Board considers that question, the parties reserve the right to take any position they deem appropriate.]

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE

BILL NO.

BY

AN ACT

AMENDING CHAPTER 2, TITLE 42, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 42-203B, TO PROVIDE THAT THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE THE AUTHORITY TO SUBORDINATE RIGHTS GRANTED FOR POWER PURPOSES TO SUBSEQUENT UPSTREAM RIGHTS, AND TO LIMIT PERMITS OR LICENSES GRANTED FOR POWER PURPOSES TO A SPECIFIC TERM.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Chapter 2, Title 42, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 42-203B, Idaho Code, and to read as follows:

42-203B. AUTHORITY TO SUBORDINATE RIGHTS — NATURE OF SUBORDINATED WATER RIGHT AND AUTHORITY TO ESTABLISH A SUBORDINATION CONDITION — AUTHORITY TO LIMIT TERM OF PERMIT OR LICENSE. The director shall have the authority to subordinate the rights granted in a permit or license for power purposes to subsequent upstream beneficial depletionary uses. A subordinated water right for power use does not give rise to any claim against, or right to interfere with, the holder of subsequent upstream rights established pursuant to state law. The director shall also have the authority to limit a permit or license for power purposes to a specific term.

SECTION 2. This Act does not apply to licenses which have already been issued as of the effective date of this Act.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this Act shall be in full force and effect on and after its passage and approval.

Section 1:

1. The legislature finds and declares that it is in the public interest to specifically implement the state's power to regulate and limit the use of water for power purposes and to define the relationship between the state and the holder of a water right for power purposes to the extent such right exceeds an established minimum flow. The purposes of the trust established by Sections 2 and 3 of this act are to assure an adequate supply of water for all future beneficial uses and to clarify and protect the right of a user of water for power purposes to continue using the water pending approval of depletionary future beneficial uses. [Further findings will be added]

2. A water right for power purposes which is defined by agreement with the state as unsubordinated to the extent of a minimum flow established by state action shall remain unsubordinated as defined by the agreement. Any portion of the water rights for power purposes in excess of the level so established shall be held in trust by the State of Idaho, by and through the Governor, for the use and benefit of the user of the water for power purposes, and of the people of the State of Idaho. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law.

3. Water rights for power purposes not defined by agreement with the state shall not be subject to depletion below any applicable minimum stream flow established by state action. Water rights for power purposes in excess of such minimum stream flow shall be held in trust by the State of Idaho, by and through the Governor, for the use and benefit of the users of water for power purposes and of the people of the State of Idaho. The rights held in trust shall be subject to subordination to and depletion by future upstream beneficial users whose rights are acquired pursuant to state law.

4. The user of water for power purposes as beneficiary of the trust established by Sections 2 and 3 shall be entitled to use water available at its facilities to the extent of the water right, and to protect its rights to the use of the water as provided by state law against depletions or claims not in accordance with state law.

5. The Governor or his designee is hereby authorized and empowered to enter into agreements with holders of water rights for power purposes to define that portion of their water rights at or below the level of the applicable minimum stream flow as being unsubordinated to upstream beneficial uses and depletions, and to define such rights in excess thereof as

being held in trust by the State according to Section 2 above. Such agreements shall be subject to ratification by law. The contract entered into by the Governor and the Idaho Power Company on October 24, 1984, is hereby found and declared to be such an agreement, and the legislature hereby ratifies the Governor's authority and power to enter into this agreement.

Section 2: This Act shall not be construed as modifying, amending, or repealing any interstate compact.

Section 3: The provisions of this Act are hereby declared to be severable. If any provision of this Act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this Act.

Section 4: An emergency existing therefor, which emergency is hereby declared to exist, this Act shall be in full force and effect on and after its passage and approval.

LEGISLATURE OF THE STATE OF IDAHO

Forty-eighth Legislature

First Regular Session - 1985

IN THE

BILL NO.

BY

AN ACT

AMENDING SECTION 42-1805, IDAHO CODE, TO PROVIDE THAT THE
DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHALL HAVE
THE POWER TO ESTABLISH RULES AND REGULATIONS.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 42-1805, be, and the same is hereby
amended to read as follows:

42-1805. ADDITIONAL DUTIES — In addition to other duties
prescribed by law, the director of the department of water
resources shall have the following powers and duties:

(1) To represent the state in all matters pertaining to
interstate and international water rights affecting Idaho water
resources; and to cooperate with all agencies, now existing or
hereafter to be formed, within the state or within other
jurisdictions, in matters affecting the development of the
water resources of this state.

(2) To prepare a present and continuing inventory of the
water resources of this state, ascertain means and methods of
conserving and augmenting these and determine as accurately as
possible the most effective means by which these water
resources may be applied for the benefit of the people of this
state.

(3) To conduct surveys, tests, investigations, research, examinations, studies, and estimates of cost relating to availability of unappropriated water, effective use of existing supply, conservation, storage, distribution and use of water.

(4) To prepare and compile information and data obtained and to make the same available to interested individuals or agencies.

(5) To cooperate with and coordinate activities with the administrator of the division of environmental protection of the department of health and welfare as such activities relate to the functions of either or both departments concerning water quality. Such cooperation and coordination shall specifically require that:

(a) The director meet at least quarterly with the administrator and his staff to discuss water quality programs. A copy of the minutes of such meeting shall be transmitted to the governor.

(b) The director transmit to the administrator, reports and information prepared by him pertaining to water quality programs, and proposed rules and regulations pertaining to water quality programs.

(c) The director shall make available to the administrator and the administrator shall make available to the director all notices of hearings relating to the promulgation of rules and regulations relating to water quality, waste discharge permits, and stream channel alteration, as such directly affect water quality, and notice of any other hearings and meetings which relate to water quality.

(6) To perform administrative duties and such other functions as the board may from time to time assign to the director to enable the board to carry out its powers and duties.

(7) To suspend the issuance of licenses or permits of a defined class or in a defined geographic area, as necessary to protect existing uses, ensure compliance with state law or implement the State Water Plan.

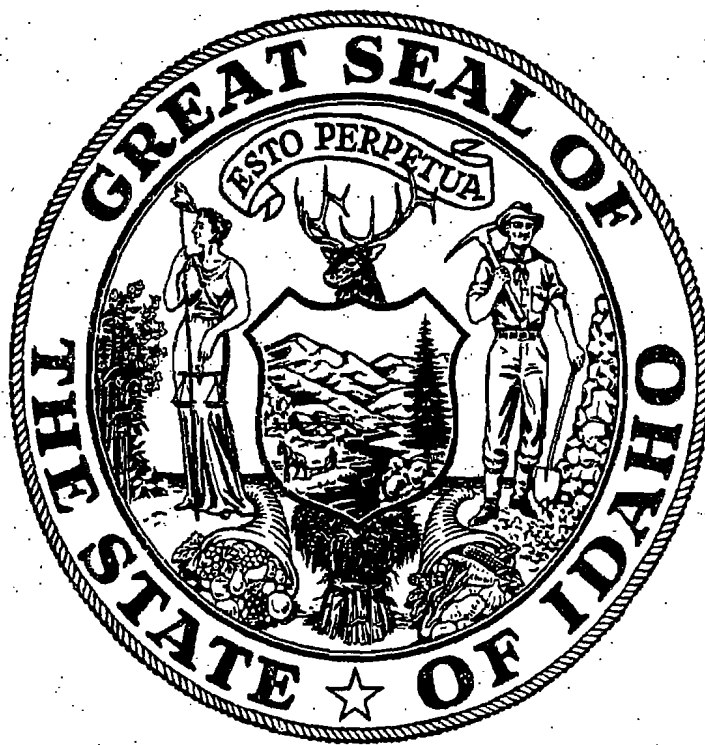
(8) To promulgate, adopt, modify, repeal and enforce rules and regulations implementing or effectuating the powers and duties of the department.

Exhibit T

1977 State Water Plan

State of Idaho

The State Water Plan — Part Two



Adopted by the

Idaho Water Resource Board

on December 29, 1976

State of Idaho

The State Water Plan — Part Two

Idaho Water Resource Board:

John F. Streiff
Chairman

George L. Yost
Vice-Chairman

Donald R. Kramer
Secretary

Joseph H. Nettleton

Franklin Jones

Scott W. Reed

Edwin C. Schlender

M. Reed Hansen

December 1976

Idaho Water Resource Board, Statehouse, Boise, Idaho 83720

Electric Energy

Water is allocated for electric energy. Future electric energy requirements will be largely supplied from thermal plants. The plan provides for 170,000 acre-feet beyond August 1975 levels for consumptive use in cooling thermal power plants. The depletion is distributed as follows: Upper Snake - 75,000 acre-feet; Southwest Idaho - 30,000 acre-feet. In addition, flows in the Snake River will be stabilized for the hydropower generating capability of the river.

Navigation

No specific allocation of water is made for commercial or recreational navigation. Commercial navigation enroute to Lewiston on the Columbia River and Lower Snake River can be accommodated with the flows leaving Idaho in Snake River at Lewiston. Above Lewiston, commercial and recreational navigation should be accommodated within the protected flows on Snake River and the instream flows on tributary streams, however, both commercial and recreational navigation are included as components of the multi-lake and reservoir management program.

Aquaculture

No specific allocation of water is made for aquaculture uses. Water necessary to process aquaculture products is included as a component of the municipal and industrial water allocation. Aquaculture is encouraged to continue to expand when and where water supplies are available and where such uses do not conflict with other public benefits. Future management and development of the Snake Plain aquifer may reduce the present flow of springs tributary to the Snake River. If that situation occurs, adequate water for aquaculture will be protected, however, aquaculture interests may need to construct different water diversion facilities than presently exist.

Recreation

No specific allocation of water is made for recreation. The instream flow program for fish and wildlife will provide water for recreation on tributary streams. Main stem Snake River recreation may be affected because of lower flows than presently exist particularly during summer months. Some existing reservoirs may experience greater seasonal fluctuations from increased use of stored water. The State Natural and Recreational River System and Greenway-Greenbelt System will aid and promote water-oriented recreation in the basin. Recreation is also a component of the multi-use lake and reservoir management program.

Indian Resource Use

No separate allocation of water is made for Indian resource use on the Indian reservations. Indian water needs are included as components of other water uses. Irrigation, municipal, industrial, electric energy and the instream flow program include water for Indian uses. Identification of specific needs is required before water allocations can be made specifically to Indian water uses. Several policies in the plan are designed to assist the Indian tribes in obtaining necessary information and incorporating their needs into the State Water Plan.

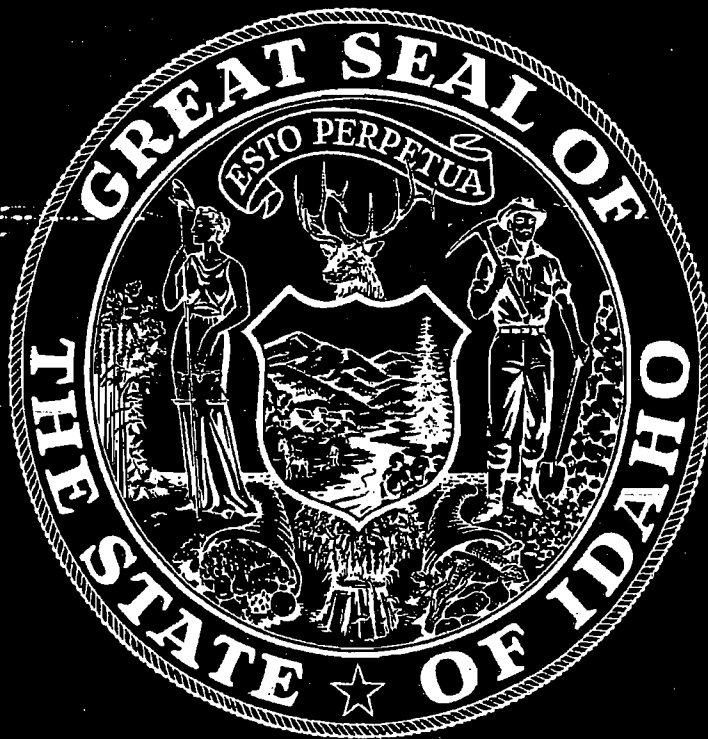
Fish and Wildlife

No specific allocation of water on the main stem Snake River is made for fish and wildlife, however, the plan does provide for maintaining flows on selected tributary streams to the Snake River for fish and wildlife.

Exhibit U

1982 State Water Plan

Idaho State Water Plan



Adopted by the
Idaho Water Resource Board

January 19, 1982

Electric Energy

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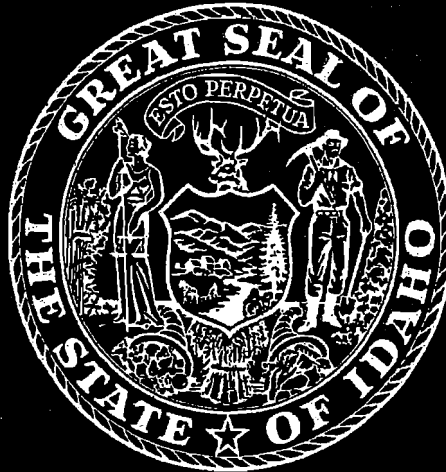
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Exhibit V

1986 State Water Plan

IDAHO STATE WATER PLAN



ADOPTED BY THE
IDAHO WATER RESOURCE BOARD

DECEMBER 12, 1986

new uses will depend upon the transfer of existing water rights from one use to another. Idaho Code, Sections 42-108, 108A, 108B and 42-222, provides for changes in place of diversion, place of use, period of use, and nature of use. Provision is made to protect other water users, the agricultural base of an area, and the public interest.

POLICY 1F - *Ground and Surface Water Connection*

IT IS THE POLICY OF IDAHO THAT WHERE EVIDENCE OF HYDROLOGIC CONNECTION EXISTS BETWEEN GROUND AND SURFACE WATER, THEY BE MANAGED AS A SINGLE RESOURCE.

Nearly all ground-water aquifers in the state naturally discharge to or are recharged by a surface body of water. The approval of new water-use applications and the development of management plans for the water resources of the state must recognize this relationship.

Stream reaches are classed as gaining or losing depending on the local interaction between ground and surface water. In some areas pumping ground water from wells will reduce the amount of water flowing in a stream. During periods of high stream flow significant aquifer recharge can occur. When water is diverted from a stream for irrigation purposes conveyance and deep percolation losses are major factors in aquifer recharge.

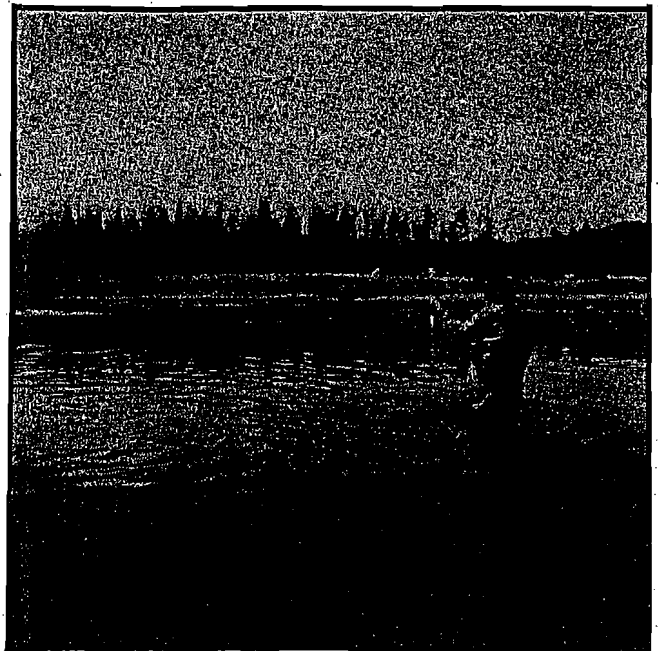
The relationship between ground and surface water is extremely complex. The Water Board regards this policy as a first step in more effective management of the state's water resources. Legislation and Water Board resolutions will provide direction for the implementation of this policy.

POLICY 1G - *Withdrawal of Ground Water*

IT IS THE POLICY OF IDAHO THAT PUMPED DEPLETIONS IN AN AQUIFER SHOULD NOT EXCEED THE ANTICIPATED RATE OF FUTURE RECHARGE TO THAT AQUIFER. IN THOSE INSTANCES WHERE AN AQUIFER IS RECHARGED SO SLOWLY THAT ANY DEVELOPMENT WOULD RESULT IN WITHDRAWALS EXCEEDING RECHARGE, THE DIRECTOR OF THE DEPARTMENT OF WATER RESOURCES SHOULD HAVE THE AUTHORITY TO ESTABLISH AN AQUIFER MANAGEMENT PLAN THAT RECOGNIZES THE EVENTUAL DEPLETION OF THE RESOURCE.

Many of the citizens of Idaho depend on ground water for drinking water. Approximately 30 percent of Idaho's irrigated acreage uses ground water. Overuse of ground water leading to aquifer depletion could cause economic and social problems nearly anywhere in the state.

There are many areas within the state where withdrawal/ recharge imbalance of the ground-water resource has already occurred. If existing laws were strictly enforced many wells would have to be abandoned. In order to protect, insofar as possible, existing ground-water rights and to provide for future development the state



should seek to correct withdrawal/recharge imbalances in an orderly fashion, attempting to minimize negative impacts on the citizenry.

The existing statutory authorities giving the director of the Department of Water Resources the power to designate areas as either Ground Water Management Areas or Critical Ground Water Areas provide the logical first step in arresting excessive withdrawals from an aquifer. Designation as a critical ground water area should automatically engender an adjudication of the area.

There are rare instances where an aquifer is recharged so slowly that almost any water use causes depletion. It makes little sense to defer use of these aquifers. The director of the Department of Water Resources should be empowered to designate aquifers where the public interest would best be served by allowing depletion. Rules and regulations adopted for establishing and managing such areas should provide for public input at the local and state level.

POLICY 1H - Ground-Water Quality

IT IS THE POLICY OF IDAHO THAT GROUND WATER BE PROTECTED AGAINST UNREASONABLE CONTAMINATION OR DETERIORATION IN QUALITY, THEREBY MAINTAINING THE SUITABILITY OF SUCH WATERS FOR APPROPRIATE BENEFICIAL USES.

It is essential that the quality of Idaho's ground-water resources be protected. Ground-water standards should be adopted and legislation enacted which establish specific standards and authorities to accomplish this goal. The legislation should designate a single state management agency as called for in Policy 4A of the State Water Plan.

Local units of government and special use

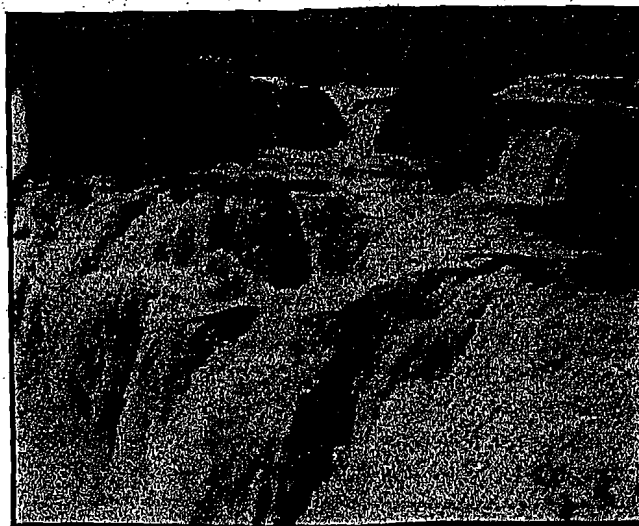
districts should be provided with more authority to deal with ground-water protection issues. A monitoring program in a cooperative effort with appropriate federal agencies should be established for ground-water quality protection programs.

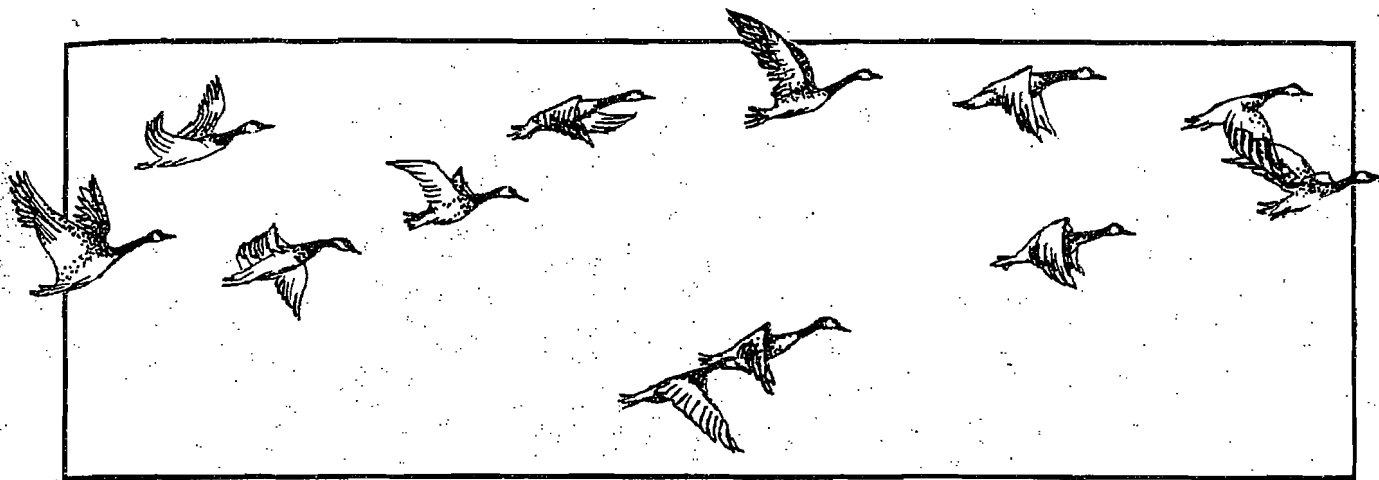
POLICY 1I - Water Resources Research Program

IT IS THE POLICY OF IDAHO TO ENCOURAGE AND DEVELOP RESEARCH ON IMPORTANT WATER RESOURCE TOPICS TO IMPLEMENT THE OBJECTIVES OF THE STATE WATER PLAN.

While water programs in Idaho can incorporate information from research in other states, more research dealing with specific problems in Idaho are needed. Topics that need immediate attention are those which:

- identify legal and institutional changes necessary to improve water management,
- evaluate the effect of various levels of moisture deficiencies on crop yields,
- investigate methods for encouraging more efficient use of water,
- determine optimum monitoring programs for key areas of ground water use, and
- evaluate the return interval of extreme drought and flooding.





River Basins Group

POLICY 5A - Snake River Basin

IT IS THE POLICY OF IDAHO THAT THE GROUND WATER AND SURFACE WATER OF THE BASIN BE MANAGED TO MEET OR EXCEED A MINIMUM AVERAGE DAILY FLOW OF ZERO MEASURED AT THE MILNER GAUGING STATION, 3,900 CFS FROM APRIL 1 TO OCTOBER 31 AND 5,600 CFS FROM NOVEMBER 1 TO MARCH 31 MEASURED AT THE MURPHY GAUGING STATION, AND 4,750 CFS MEASURED AT WEISER GAUGING STATION. A MINIMUM AVERAGE DAILY FLOW OF 5,000 CFS AT JOHNSON'S BAR SHALL BE MAINTAINED AND AN AVERAGE DAILY FLOW OF 13,000 CFS SHALL BE MAINTAINED AT LIME POINT (RIVER MILE 172) A MINIMUM OF 95 PERCENT OF THE TIME. LOWER FLOWS MAY BE PERMITTED AT LIME POINT ONLY DURING THE MONTHS OF JULY, AUGUST, AND SEPTEMBER.

The minimum flows established for the Snake River at the Murphy and Weiser gauging stations are management constraints; they further insure that minimum flow levels of Snake River water will be available for hydropower, fish, wildlife and recreational purposes. The establishment of a zero minimum flow at the Milner gauging station allows for existing uses to be continued and for some new uses above Milner.

It also means that river flows downstream from that point to Swan Falls Dam may consist almost entirely of ground-water discharge during portions of low-water years. The Snake River Plain aquifer which provides this water must therefore be managed as an integral part of the river system.

The minimum flows established for Johnson's Bar and Lime Point are contained in the original Federal Power Commission license for the Hells Canyon hydropower complex. By adopting these flows, the Idaho Water Resource Board recognizes the importance of minimum flows to downstream uses and makes their maintenance a matter of state water policy. Article 43 of the power license provides that:

"The project shall be operated in the interest of navigation to maintain 13,000 cfs flow in the Snake River at Lime Point (river mile 172) a minimum of 95 percent of the time, when determined by the Chief of Engineers to be necessary for navigation. Regulated flows of less than 13,000 cfs will be limited to the months of July, August, and September,

developed by the Water Resource Board for use in calculating impacts on hydropower generation.

POLICY 5J - Snake River Stored Water for Management

IT IS THE POLICY OF IDAHO THAT RESERVOIR STORAGE BE ACQUIRED IN THE NAME OF THE IDAHO WATER RESOURCE BOARD TO PROVIDE MANAGEMENT FLEXIBILITY IN ASSURING THE MINIMUM FLOWS DESIGNATED FOR THE SNAKE RIVER.

The Idaho Department of Water Resources is expected to allocate the unappropriated waters and the power rights held in trust by the state in such a manner as to assure minimum flows at designated key points on the Snake River. The impacts of ground-water use within the basin on the timing of aquifer discharge to the rivers is such that at some time stored surface water may be necessary to maintain the designated minimum flows.

At this time there is unallocated reservoir storage within the basin which could be acquired by the state. These waters would provide flexibility for management decisions and provide assurance that the established minimum flows can be maintained. The state should act to acquire sufficient reservoir storage for this purpose. In the future no unallocated stored water will be available, and it may be impossible to acquire sufficient water to satisfy river demands. Until such time as these waters are needed for management purposes, they shall be credited to the Water Supply Bank and funds obtained from their lease or sale shall accrue to the Water Management Account.

POLICY 5K - Water Quality of the Snake Plain Aquifer

IT IS THE POLICY OF IDAHO THAT THE STATE SHOULD DEVELOP AND ADMINISTER A PROGRAM TO PROTECT THE QUALITY OF THE WATER IN THE SNAKE PLAIN AQUIFER.

The Snake Plain Aquifer, consisting of basalt and interflow sediments, is a major source of irrigation and drinking water for some 200,000 Idaho residents. The permeability of the aquifer is principally a function of the density of fractures within the basalt. Very little pollution attenuation occurs when water flows through fractures in basalt, and the soil cover over much of the Snake Plain Aquifer is thin to nonexistent. For these reasons, the Snake Plain Aquifer has been proposed for federal designation as a sole-source aquifer.

Because of the importance of this aquifer to the economy of Idaho, the state should take the lead in protecting the quality of water in the aquifer. As a first step, the Department of Health and Welfare has published a Snake Plain Management Strategy. Legislation should be adopted to protect the quality of the water in the aquifer.

POLICY 6A - Bear River Basin

IT IS THE POLICY OF IDAHO THAT WATER USE AND MANAGEMENT IN THE BEAR RIVER BASIN CONFORM TO THE ALLOCATIONS SET FORTH IN THE BEAR RIVER COMPACT (I.C. 42-3402).

The Bear River Compact has been in effect since 1958, and water allocations for the entire basin were adopted in 1978. The compact must be reviewed at intervals of less than twenty years and may be amended during the review process. The goal of Idaho's representatives on the com-

flow of 3,300 cfs at Murphy and 4,750 cfs at Weiser, stabilized flows were guaranteed for hydropower generation. The minimum daily flows for hydropower generation are now increased as stated in Policy 5A. In addition, this policy specifically recognizes hydropower generation as a beneficial use of water and acknowledges the public interest in maintaining the minimum river flow at key points. Any water depletion for thermal power generation would now come from block of water allocated to DCMI uses.

POLICY 5F - *Snake River Navigation*

IT IS THE POLICY OF IDAHO THAT WATER SUFFICIENT FOR COMMERCIAL AND RECREATIONAL NAVIGATION IS PROVIDED BY THE MINIMUM FLOWS ESTABLISHED FOR THE SNAKE RIVER.

Commercial navigation enroute to Lewiston via the Columbia River and Lower Snake River can be accommodated with the flows leaving Idaho in the Snake River at Lewiston. Above Lewiston, commercial and recreational navigation should be accommodated within the protected flows on the Snake River and tributary streams.

POLICY 5G - *Snake River Aquaculture*

IT IS THE POLICY OF IDAHO THAT WATER NECESSARY TO PROCESS AQUACULTURE PRODUCTS BE INCLUDED AS A COMPONENT OF DCMI AS PROVIDED IN POLICY 5C. THE MINIMUM FLOWS ESTABLISHED FOR THE MURPHY GAUGING STATION SHOULD PROVIDE AN ADEQUATE WATER SUPPLY FOR AQUACULTURE. IT MUST BE RECOGNIZED THAT WHILE EXISTING WATER RIGHTS ARE PROTECTED, IT MAY BE NECESSARY TO CONSTRUCT DIFFERENT DIVERSION FACILITIES THAN PRESENTLY EXIST.

Aquaculture can expand when and where water supplies are available and where such uses do not conflict with other beneficial uses. It is recognized, however, that future management and development of the Snake River Plain aquifer may reduce the present flow of springs tributary to the Snake River, necessitating changes in diversion facilities.

POLICY 5H - *Snake River Fish, Wildlife, and Recreation*

IT IS THE POLICY OF IDAHO THAT THE MINIMUM FLOWS ESTABLISHED UNDER POLICY 5A ARE SUFFICIENT AND NECESSARY TO MEET THE MINIMUM REQUIREMENTS FOR AQUATIC LIFE, FISH, AND WILDLIFE, AND TO PROVIDE WATER FOR RECREATION IN THE SNAKE RIVER BELOW MILNER DAM. STREAMFLOW DEPLETION BELOW THE MINIMUM FLOWS IS NOT IN THE PUBLIC INTEREST.

The policy reiterates the view that the minimum flows established in Policy 5A will protect fish, wildlife, aquatic life and recreation within the Snake River Basin at acceptable levels and that this is in the public interest. State law provides for the Water Resource Board to apply for a water right for unappropriated water for minimum flows necessary "for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation and navigation values, and water quality." The minimum stream flow legislation, where appropriate, can be used on the Snake River and tributary streams to enhance these values.

